



U.S. Citizenship  
and Immigration  
Services

FILE:



Office: VERMONT SERVICE CENTER

Date: JUN 14 2004

IN RE:

Applicant:



APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "R. P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director determined that the applicant failed to submit evidence to establish that she had continuously resided in the United States since December 30, 1998, that she had been continuously physically present in the United States since January 5, 1999, and that she was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. The director, therefore, denied the application.

On appeal, the applicant states she has resided in the United States since March 25, 1998. The applicant submits additional evidence of her residence in the United States.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant did file an initial application for TPS on July 5, 1999. On November 8, 1999, the applicant was provided the opportunity to submit evidence of continuous residence in the United States since December 30, 1998, and physical presence since January 5, 1999. The applicant did not respond to the notice. On May 16, 2000, the TPS application submitted by the applicant on July 5, 1999, was denied due to abandonment. Since the application was denied due to abandonment, there was no appeal available. The applicant was granted 30 days to file a motion to reopen, but she failed to do so. However, the applicant submitted a motion to reopen on June 7, 2000. On August 14, 2000, the applicant was again requested to submit evidence that she had met the continuous residence and physical presence criteria for TPS. The applicant was granted 60 days to respond, however, she failed to respond within the allotted timeframe. On November 29, 2000, the director issued a new notice of denial, because the applicant had failed to respond to the August 14, 2000 request for evidence. On March 12, 2001, the applicant responded to the August 14, 2000 request for evidence; however, the application was denied on November 29, 2000 because the applicant had not submitted sufficient evidence to establish her eligibility for TPS.

The applicant filed a subsequent Form I-821 on August 6, 2001. Here, the director found the applicant ineligible for filing under the provisions of late registration because this application was filed outside of the initial registration period. Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial. While the director found the applicant ineligible for TPS because she had failed to establish eligibility for late registration, the director's decision did not specifically explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on July 5, 1999. That initial application resulted in a denial from the director. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed a subsequent Form I-821 on August 6, 2001. As the initial application was denied on May 16, 2000, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for TPS during the initial registration period announced by public notice in the Federal Register, or
  - (2) During any subsequent extension of such designation if at the time of the initial registration period:
    - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
    - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
    - (iii) The applicant is a parolee or has a pending request for reparole; or
    - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of condition described in paragraph (f)(2) of this section.

The term *continuously resided*, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

The term *continuously physically present*, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present in the United States since January 5, 1999. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. Subsequent extensions of the TPS designation have been granted with the latest extension valid until January 5, 2005, upon the applicant's re-registration during the requisite time period.

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record reveals that the applicant did file an initial application for TPS on July 5, 1999. As stated above, that application was denied on May 16, 2000 for abandonment. Since the application was denied due to abandonment, there was no appeal available. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as a new filing for TPS benefits. The record reflects that the applicant filed her current TPS application on August 6, 2001, after the initial registration period for Hondurans had expired.

On April 26, 2002, the applicant was requested to submit evidence to establish her continuous residence and physical presence in the United States during the requisite period, and evidence to establish that she was eligible for filing after the initial registration period January 5, 1999 to August 20, 1999. The applicant submitted evidence in an attempt to establish her qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file her Application for Temporary Protected Status within the initial registration period. The applicant has not furnished any evidence to establish that she has met any of criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application on this ground will be affirmed.

The second issue in this proceeding is whether the applicant has established that she has continuously resided in the United States since December 30, 1998, and that she has been continuously physically present in the United States since January 5, 1999.

As stated, the applicant was requested on April 26, 2002 to submit: (1) evidence to show that she has continuously resided in the United States since December 30, 1998; (2) evidence to show that she has been continuously physically present in the United States since January 5, 1999; and (3) evidence to establish that she was eligible for filing after the initial registration period January 5, 1999 to August 20, 1999. In response,

the applicant submitted a copy of a Form I-797C, acknowledging receipt of a Form I-765, Application for Employment Authorization, which had been received on July 6, 1999. The applicant also submitted an August 3, 2001 affidavit from a Fausto D. Estrella, who stated he knows the applicant because she has lived in New York since 1998.

On September 14, 2002, the director denied the application because he determined the evidence submitted by the applicant did not establish that she had continuously resided in the United States since December 30, 1998, and she had not established that she was eligible for filing for TPS after the initial registration period from January 5, 1999 to August 20, 1999.

The applicant, on appeal, states she has resided in the United States since she entered on March 25, 1998. She submits: a tenant's agreement, dated May 15, 1998; an August 3, 2001 letter from [REDACTED] who states the applicant has been his tenant since May 15, 1998; rent receipts dated May 15, 1998 and June 1, 1998; and a health insurance card, dated July 9, 1999.

The statement from [REDACTED] submitted in response to a request for additional evidence, and the statement from [REDACTED], submitted on appeal, provide conflicting accounts regarding the applicant's residence. As stated above, [REDACTED] stated that he has known the applicant "since she was living in New York on 1998 to present." The September 4, 2002 statement from [REDACTED] purportedly the applicant's landlord, indicates the applicant has been his tenant since May 15, 1998. He attaches a copy of a lease agreement, dated May 15, 1998, which pertains to rental of the premises at [REDACTED] Massachusetts. The applicant also submits two hand-written receipts: [REDACTED] which has been altered to show the date as June 1, 1998; and [REDACTED] dated May 15, 1998, for rental of the premises at 91 Southgate Street, Worcester, Massachusetts. The rent receipt, [REDACTED] bears a sequential receipt number, which precedes the other rent receipt, which was dated May 15, 1998. Therefore, these receipts carry little evidentiary weight and will not serve to establish the applicant's eligibility.

The applicant submitted a May 15, 2002 letter from a [REDACTED] who stated the applicant came to him to inquire about renting a room in his home at [REDACTED] on March 25, 1998. He stated he rented a room to her and she began paying rent on the 30<sup>th</sup> of that month. A copy of a December 30, 1998 rent receipt, [REDACTED] in the amount of \$50.00, purportedly for rent [REDACTED] New York, for the period from March 30, 1998 to January 1999, was attached to the letter. The authenticity of this receipt is questionable, since it is unlikely that a room in [REDACTED] New York, could be obtained for the amount of \$50 for a period of ten months.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to resolve the discrepancies in her claims of residence since December 30, 1998. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

The applicant also submitted an identification card, issued by Royal Institutional Service, Inc., which neither indicates where it was issued or the date it was issued. Therefore, the identification card is of no probative

value. The applicant also submitted a health insurance pharmacy card, which reflects that the applicant applied for health benefits on July 9, 1999. At best, this only establishes that the applicant may have been present in the United States on July 9, 1999, when she submitted an application for health benefits. Moreover, a health insurance pharmacy card, by itself, is not sufficient to establish the applicant's claimed residence in the United States.

The applicant has failed to establish that she had continuously resided in the United States since December 30, 1998, that she had been continuously physically present in the United States since January 5, 1999. 8 C.F.R. § § 244.2(b) and (c). Consequently, the director's decision to deny the application on this ground is also affirmed.

The burden of proof is upon the applicant to establish that she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

**ORDER:** The appeal is dismissed.