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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

MAY 27 2004

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date:
[LIN 99 229 52708]

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center. The case was subsequently reopened on motion at the Nebraska Service Center, and the decision of the director was not reversed. The case 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 met the date of entry, continuous residence, and physical presence criteria for TPS. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the applicant has submitted sufficient proof of her date of entry, continuous residence, and physical presence in the United States to qualify for TPS. Counsel asserts that the only reason the director denied the application was because of a discrepancy between the applicant's employment evidence and the rent receipts and medical records she had submitted. Counsel states that there is no discrepancy in the applicant's documentation, and she asserts that a review of the record will show that the applicant was present in the United States in December 1998.

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 record reflects that the applicant filed her TPS application on June 23, 1999. She stated on the Form I-821, Application for Temporary Protected Status, that she entered the United States without inspection on November 15, 1998. On September 1, 1999, the applicant was requested to submit evidence to establish that she had continuously resided in the United States since December 30, 1998, and that she had been continuously physically present in the United States since January 5, 1999. The applicant did not respond to the notice. On January 5, 2000, the director denied the application due to abandonment.

8 C.F.R. §103.2(b)(13) provides that if all requested initial evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. §103.2(b)(15) provides that a denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under 8 C.F.R. §103.5.

On June 4, 2002, counsel submitted a motion to reopen. He stated that the applicant had responded to the request for additional evidence and provided all the requested material within the allotted timeframe. Counsel stated that the applicant submitted a second application for TPS, but it was returned to her because she had

not included the proper filing fee. Counsel stated that the applicant became ill during 1999, and the illness continued until shortly before she filed the motion to reopen. Counsel provided copies of the documentation the applicant had previously submitted. Upon consideration, the director granted the motion and reopened the application for review. On September 3, 2002, the director denied the application for a second time because the applicant had failed to provide conclusive evidence that she had met the requirements of the registration period for date of entry prior to December 30, 1998.

On appeal, counsel states that the applicant has submitted sufficient proof of her date of entry, continuous residence, and physical presence in the United States to qualify for TPS. Counsel states that there is no discrepancy in the documentation the applicant submitted. She asserts that a review of the record will show that the applicant was present in the United States in December 1998.

The record reflects that the applicant submitted a statement from a Margarita Trejo, who stated the applicant worked for her as a housekeeper from December 8, 1998 until April 24, 1999. The employment letter was not notarized, and has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the affiant does not provide the address where the applicant resided during the period of her employment.

In addition, the applicant's medical records indicate that the applicant had stated that she had entered the United States six months prior to her treatment on December 7, 1999, which would have been approximately June 7, 1999. The applicant has not submitted sufficient evidence to establish that she entered the United States prior to that time. Therefore, she could not have met the requirements of continuous residence in the United States since December 30, 1998, and physical presence since January 5, 1999.

While counsel claims that there is no discrepancy in the applicant's documentation, the evidence furnished by the applicant does contain discrepancies which call into question the date when the applicant arrived in the United States. The report from Kent Petrie, M.D., Vail Valley Medical Center, stated that the applicant "moved to the United States from Honduras on November 15, 1998." However, the December 7, 1999 report of Wagner Schorr, M.D, stated that the applicant entered the United States "6 months prior" to the examination. The September 11, 1999 report of Laurie Strassbarger, M.D., stated that the applicant came to the United States "8 months ago." Counsel claims that this evidence places the applicant in the United States in December 1998. However, at best, this would only place the applicant in the United States between January 11, 1999 and June 7, 1999, after the requisite time period

The applicant also submitted an undated statement from a Jesus Sanchez, who stated that the applicant lived in his home from November 18, 1998. He also stated that the applicant rented a room from him beginning in December 1998. The statement is not notarized. Furthermore, Mr. Sanchez neither provided his own address, nor indicated the address where the applicant lived during this time period. In addition, the applicant provided copies of hand-written receipts, signed by a Mr. Sanchez, for the period from December 1, 1998, to September 1, 1999. The receipts do not indicate the address where the applicant paid rent. Hand-written entries on pre-printed receipt forms, particularly when, as in this case, they contradict other information submitted by the applicant, are not persuasive evidence. As a result, the receipts are not very compelling or convincing, and are of little or no probative value.

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 explain or justify the discrepancies in her medical records. Therefore, the reliability of the remaining evidence offered by the applicant is suspect, and it must be concluded that the applicant has failed to establish that she has met the continuous residence and physical presence criteria for TPS.

Counsel claims that there is no discrepancy in the applicant's documentation, and that the applicant's evidence establishes that she was present in the United States in December 1998. However, assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). Without more persuasive evidence as to the applicant's date of entry into the United States, it cannot be concluded that she has met the continuous residence and physical presence criteria for temporary protected status. Accordingly, the director's decision to deny the application is affirmed.

The burden of proof is upon the applicant to establish that he or 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.