



U.S. Citizenship  
and Immigration  
Services

WAI



FILE:



Office: Texas Service Center

Date: OCT 07 2006

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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

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identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**DISCUSSION:** The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) 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 establish that she had maintained continuous residence and continuous physical presence in the United States during the requisite time periods. The director, therefore, denied the application.

On appeal, the applicant asserts her eligibility for TPS.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 244.3;
- (e) Is not ineligible under § 244.4; and
- (f)
  - (1) Registers for Temporary Protected Status 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 parole; 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 conditions described in paragraph (f)(2) of this section.

The phrase *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.

The phrase *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 phrase *brief, casual, and innocent absence*, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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 since January 5, 1999. 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 initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed her application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on February 27, 2003.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

On April 18, 2003 and November 5, 2003, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing that she had been physically present in the United States from January 15, 1999, to the date of filing her application for TPS. The director also noted that the applicant was apprehended by the United States Border Patrol on July 27, 2002, and requested the applicant to provide evidence regarding her absence from the United States.

In response, the applicant submitted some evidence in an attempt to establish her continuous residence and continuous physical presence in the United States; however, she did not submit any evidence to establish her eligibility for late registration.

The director determined that the applicant had failed to establish her continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States since January 5, 1999, to the date of filing her application. Further, the director indicated that according to the record, the applicant had entered the United States on July 27, 2002, and thus, the applicant did not meet the requirements of TPS. The director, therefore, denied the application on December 22, 2003.

On appeal, the applicant asserts that she has been living in the United States since 1998, and that she has all the evidence to verify that she has been living in the United States since that time. Further, she states that her father had passed on May 14, 2002, and she left the United States for Honduras since her grandmother was in the hospital on July 1, 2002. The applicant did not submit any documentation along with her appeal.

The applicant has not submitted sufficient credible evidence to establish her qualifying residence or physical presence in the United States during the requisite periods for TPS. Further, she has not provided any documentation regarding her claimed absence from the United States beyond her own statements. It is noted on the Form I-765, Application for Employment Authorization, the applicant indicated both her manner of entry into the United States and her current immigration status as entry without inspection (EWI), while on the Form I-821, Application for Temporary Protected Status, the applicant indicated that she entered the United States without inspection, and listed her current immigration status as an F-1, nonimmigrant student. The applicant, however, presented no evidence to substantiate that she had been granted any type of nonimmigrant status. She has, thereby, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

It is noted that the applicant was ordered removed from the United States in absentia on January 27, 2003, at San Antonio, Texas, based upon her apprehension near Eagle Pass, Texas, on July 27, 2002.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish her eligibility for late registration. As the appeal will be dismissed on the grounds discussed above, these issues need not be examined further.

An alien applying for TPS has the burden of proving 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.