



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: SEP 27 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.

for Robert P. Wiemann, Director  
Administrative Appeals Office

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Identifying data deleted to  
prevent identity compromise  
Investigation of [redacted]

**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 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 denied the application because the applicant failed to establish she was eligible for late registration. The director also found that the applicant had failed to establish her continuous residence and her continuous physical presence in the United States during the requisite periods.

On appeal, the applicant provides a brief statement and additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant 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 conditions described in paragraph (f)(2) of this section.

The first issue raised by the director to be addressed in this proceeding is whether the applicant is eligible for late registration.

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.

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 initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reflects that the applicant filed her initial application with Citizenship and Immigration Services (CIS), on July 7, 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 own statements. 8 C.F.R. § 244.9(b).

The record of proceeding confirms that the applicant filed her application for TPS on July 7, 2003, after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

On August 13, 2003, in a notice of intent to deny, 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 of her continuous residence and her continuous physical presence in the United States during the required timeframes. The applicant failed to respond to the notice of intent to deny. Consequently, the director found that the applicant failed to establish her eligibility for late registration, her continuous physical presence in

the United States during the required timeframe, and her continuous residence in the United States during the required timeframe. Therefore, the director denied the application on October 22, 2003.

On appeal, the applicant states that she did not "get any information about my case, or letter, only this time." It is noted that the applicant's address on the Form I-290B, Notice of Appeal to the Administrative Appeals Unit (AAU), dated November 2, 2003, is the same as the address listed on her TPS application. There is no indication in the record to suggest that there has been an address change for the applicant.

The applicant provided no additional evidence on appeal that would establish her eligibility for late registration. Therefore, the applicant does not qualify for late registration as described in 8 C.F.R. § 244.2(f)(2). The director's decision to deny the application for temporary protected status will be affirmed.

The remaining issues raised by the director to be addressed in this proceeding are whether the applicant has established her continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States since January 5, 1999. The applicant must also have been in the United States during the requisite timeframe and otherwise satisfy the requirements under 8 C.F.R. § 244.2, as stated above.

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.

As previously stated, the applicant, in a notice of intent to deny dated August 13, 2003, was requested to submit additional evidence to establish her continuous residence and her continuous physical presence in the

United States during the requisite timeframes. However, the applicant failed to respond to the notice of intent to deny. Consequently, the director denied the application on October 22, 2003, finding that the applicant failed to establish her continuous residence and her continuous physical presence in the United States during the required periods.

On appeal, the applicant provides: photocopies of her father's Employment Authorization Card and social security card; a photocopy of her birth certificate along with the English translation; several copies of the Service's Form I-797C, Notice of Action; several affidavits from persons certifying that they have known the applicant since "July 1998;" a copy of a "Medicaid Presumptive Eligibility For Pregnant Women Screening Checklist," dated May 10, 2000; a letter dated July 2, 2003, from the owner of Deli Rinconcito stating that [REDACTED] has been an employee of the Deli since June 2001; and, a copy of the applicant's son's birth certificate. The applicant also resubmits a photocopy of the biographical page of her passport. It is noted that in the aforementioned letter from the owner of the Deli Rinconcito, it has not been explained as to who [REDACTED] is.

None of the additional documentation submitted on appeal is sufficient in establishing that the applicant has continuously resided in the United States and has been continuously physically present in the United States during the required timeframes. The affidavits, without supporting documentary evidence, are not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Also, the employee letter from Deli Rinconcito appears not to relate to the applicant. Further, the remaining evidence submitted is dated after the qualifying timeframes. The applicant has failed to establish that she has met the criteria described in 8 C.R.R. § 244.2(b) and (c). Therefore, the director's decision to deny the application for temporary protected status for these reasons will be affirmed.

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.