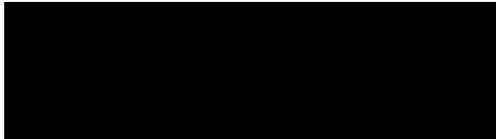


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**M1**

FILE: [REDACTED]  
[EAC 02 226 52329]

OFFICE: VERMONT SERVICE CENTER

DATE: **AUG 19 2005**

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: 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.

  
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 denied the application due to abandonment.

On appeal, the applicant states that she did submit evidence in response to the director's request for evidence and asserts her claim of eligibility for TPS.

If all requested initial evidence and requested additional 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)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The applicant was requested on April 3, 2003, to submit evidence to establish that she was eligible to register for TPS under the late initial registration provisions. The director also requested that the applicant submit evidence to establish her continuous residency in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999. The director stated that the applicant failed to respond to this request; therefore, the director concluded that the applicant had abandoned her application and denied the application on May 23, 2003.

The record of proceeding, however, shows that the applicant did respond to the applicant's request for evidence. The response was received by the Vermont Service Center on May 3, 2003, prior to the director's decision. Therefore, the director's finding that the applicant abandoned her application will be withdrawn, and a decision will be made based on the evidence of record.

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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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 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 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.

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 July 5, 2006, 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 Citizenship and Immigration Services (CIS), on June 19, 2002.

The burden of proof is upon the applicant to establish that 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

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

The record of proceedings confirms that the applicant filed her application 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/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 April 3, 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 her qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation relating to her residence and physical presence in the United States.

The director determined that the applicant had failed to establish that she was eligible for TPS and denied the application on May 23, 2003. On appeal, the applicant reasserts her claim of eligibility for TPS.

The applicant submitted evidence in an attempt to establish her qualifying continuous residence and continuous 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 submitted any evidence to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish her eligibility for TPS will be affirmed.

The second issue in this proceeding is 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.

As stated above, the applicant was requested on April 3, 2003 to submit evidence establishing her qualifying continuous residence in the United States since December 30, 1998, and physical presence in the United States since January 5, 1999. In response, the applicant submitted the following documentation:

1. A copy of a pay statement from Mary's Cleaning & Services dated December 15, 1998 bearing the applicant's name and her Gaithersburg, Maryland address;
2. A copy of a birth certificate from the State of Maryland dated December 11, 2001 and bearing the applicant's name as mother of [REDACTED];
3. A copy of IRS Form W-2 for the tax year 2002 bearing the name of SJK Corporation DBA Quizno's Sub as employer, and [REDACTED] as the employee;
4. A copy of a money transfer receipt from Western Union dated September 6, 2002 and bearing the name [REDACTED] as the sender; and,
5. Copies of medical bills and hospital statements bearing the applicant's name and dated December 10, 2001, December 21, 2001, December 27, 2001, January 17, 2002, February 21, 2002, and April 7, 2002.

The director concluded that the applicant had failed to establish her eligibility for TPS and denied the application. On appeal the applicant reasserts her claim of eligibility for TPS and submits the following documentation:

6. An affidavit from [REDACTED] in which he states that he has known the applicant since December of 1998 and that she currently resides at [REDACTED] apartment [REDACTED] Gaithersburg, Maryland;
7. Copies of medical bills and statements bearing the applicant's name and dated December 11, 2001, January 17, 2002, January 24, 2002, and April 7, 2002; and,
8. Copies of billing statements from Comcast of Montgomery County dated February 24 and 28, 2003 and bearing the name [REDACTED]

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999. Although the applicant submitted a copy of a pay statement dated December 15, 1998 for the pay period ending December 1, 1998, this evidence alone is insufficient to establish continuous residence and continuous physical presence in the United States since December 30, 1998. There has been no evidence submitted to establish the applicant's whereabouts in 1999. The medical bills, hospital statements, money transfer receipt, Comcast billing statements, and W-2 for the tax year 2002 are all dated subsequent to December 30, 1998 and January 5, 1999.

There has been no corroborative evidence submitted to support the statements made by [REDACTED] regarding the applicant's claimed presence in the United States since 1998. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, insufficient evidence has been provided. Affidavits are not, by themselves, persuasive evidence of continuous residence or continuous physical presence. Further, the affiant has not demonstrated that his knowledge of the applicant's presence in the United States is independent of what the applicant told him about her entry into the United States. If not, then this statement is essentially an extension of the applicant's personal testimony rather than independent corroboration of that testimony. Without corroborative evidence, affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's continuous residence and continuous physical presence in the United States. Moreover, affidavits are only specifically listed as acceptable evidence for proof of employment, and attestations by churches, unions, or other organizations of the applicant's residence as described in 8 C.F.R. §244.9(2)(i) and (v).

The applicant has 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.

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.