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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:



[EAC 02 233 53156]

Office: VERMONT SERVICE CENTER

Date: FEB 02 2005

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. 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 (AAO) on appeal. The appeal will be dismissed.

The applicant is a fourteen-year-old 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 because the applicant had failed to establish her qualifying continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999.

On appeal, the applicant's father submits 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 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. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999.

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).

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 record of proceeding confirms that the applicant filed her initial TPS application with the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), on June 27, 2002, after the initial registration period had closed. The applicant indicated on her Form I-821, Application for Temporary Protected Status, that she entered the United States without inspection on December 20, 2000.

On August 26, 2002, the applicant was requested to submit evidence to establish 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 to establish her nationality, and her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant's father provided:

1. A photocopy of the applicant's Honduran birth certificate;
2. Photocopies of the applicant's parents' Employment Authorization Documents (EAD's) indicating that her parents, [REDACTED] and [REDACTED] were issued EAD's as TPS applicants on July 6, 2001, valid through July 5, 2002;
3. Photocopies of the applicant's immunization records indicating that she received various vaccinations on November 18, 1992; January 20, 1993; March 10, 1993; June 23, 1993; April 14, 1994; August 24, 2000; August 30, 2001; December 4, 2001; and April 4, 2002; and,
4. A letter from the principal of Tracey Elementary School, dated September 10, 2002, stating that the applicant had been enrolled in the fourth grade for the 2002-2003 school year.

No. 1, above, establishes the applicant's nationality, and the evidence in No.2 establishes her eligibility for late registration. However, the director determined that the applicant had failed to establish her qualifying continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999, and denied the application on June 24, 2003.

The record reflects that the applicant entered the United States on December 20, 2000. No documentation has been submitted to establish that the applicant has continuously resided in the United States since December 30, 1998, and has been continuously physically present since January 5, 1999.

Although the evidence in No. 3 indicates that the applicant was physically present in the United States during specific months from 1992 through 1994, and 2000 through 2003, no documentation has been submitted to establish her continuous residence since December 30, 1998, and her continuous physical presence since January 5, 1999. It appears that the applicant was physically present in the United States on August 24, 2000, when she received a vaccination. However, she subsequently departed the United States, on an unspecified date, and did not return until December 20, 2000.

Based on the documentation submitted, it is concluded that the applicant has failed to establish her continuous residence and continuous physical presence in the United States during the requisite time periods. Furthermore, the applicant has failed to establish that her departure from the United States after August 24, 2000 constitutes a brief, casual, and innocent absence. Therefore, 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 temporary protected status will be affirmed.

An alien applying for temporary protected status 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.