



U.S. Citizenship  
and Immigration  
Services

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FILE: [Redacted]

Office: TEXAS SERVICE CENTER

Date: FEB 17 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.

*Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Texas 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 applying for 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 that she had: 1) continuously resided in the United States since December 30, 1998; and 2) been continuously physically present in the United States since January 5, 1999.

On appeal, the applicant submits a statement and additional evidence in support of the appeal.

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.

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 in the United States 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 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 director determined that the applicant had failed to submit sufficient evidence to establish her continuous residence since December 30, 1998, and continuous physical presence since January 15, 1999, in the United States. The director further noted that the evidence of record indicates that the applicant entered the United States without inspection on or about December 29, 1999, at or near Houston, Texas. Therefore, the director denied the application on June 8, 2004.

On appeal, the applicant states that she had an asylum case pending and the immigration judge told her to apply for TPS. The applicant further states that she should qualify for TPS because she: is Honduran; had an asylum

case pending; and, is married to an El Salvadoran who has been approved as a TPS registrant. The applicant also submits the following documentation:

1. A photocopy of a Marriage License, Commonwealth of Kentucky, dated February 24, 2004, between the applicant and [REDACTED]
2. A photocopy of a Marriage Certificate, Warren County, Kentucky, dated February 26, 2004, between the applicant and [REDACTED]
3. A Commonwealth of Kentucky birth certificate reflecting the birth of the applicant's child on July 9, 2003;
4. A photocopy of the El Salvadoran birth certificate of the applicant's husband;
5. Photocopies of Social Security cards for the applicant and her son;
6. A photocopy of the applicant's Republic of Honduras identification card issued on August 27, 1998; and
7. Photocopies of the employment authorization cards (EAD) for the applicant under category C08 (asylum), valid from July 1, 2003 through July 1, 2004, and for [REDACTED] under category A12, valid from October 31, 2003 through March 9, 2005.

The applicant has not submitted any evidence to establish her qualifying continuous residence or continuous physical presence in the United States during the initial portion of the requisite periods through December 29, 1999. On both the Form I-821, Application for Temporary Protected Status, and the Form I-589, Request for Asylum and Withholding of Deportation, the applicant certified under penalty of perjury that she had entered the United States on December 29, 1999. On the Form I-589, she indicated that she last left Honduras on October 12, 1999. The Notice to Appear, issued on March 21, 2001, at Chicago, Illinois, placing the applicant in removal proceedings, reflects this stated date of entry. The record does not contain any evidence to establish that the applicant was present in the United States during the initial requisite period as designated by the Attorney General for Hondurans in order to be statutorily eligible to receive TPS. In addition, it also is noted that at the asylum interview, the applicant submitted her Republic of Honduras driver's license, which indicates it was issued in Honduras on February 20, 2001, and was valid through February 20, 2003. The applicant has not explained how she obtained the license in Honduras more than one year after her stated date of entry into the United States. 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 temporary protected status will be affirmed.

It is noted that the record also includes a Notice of Hearing in Removal Proceedings, indicating that the applicant is scheduled for a Master Calendar hearing on October 28, 2004, in Louisville, Kentucky. This hearing pertains to the applicant's referral to an Immigration Judge, after she was found not eligible for asylum in the United States on March 21, 2001.

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.