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JAN 25 2005



FILE: 

Office: CALIFORNIA SERVICE CENTER

Date:

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.

*Cindy N. Gomez*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center. The director subsequently rejected the applicant's appeal as untimely filed. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen and reconsider. The director's decision to reject the appeal as untimely filed will be withdrawn, and the motion will be granted. The director's prior decision to deny the application will be affirmed.

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 found that the applicant did not enter the United States until 1999. The director, therefore, denied the application on October 31, 2003, because the applicant failed to establish continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999.

The applicant filed an appeal from the denial of her application on December 2, 2003. On appeal, the applicant stated that she was eligible for late initial registration as the child of an alien who was currently eligible to be a TPS registrant. She submitted a copy of a Honduran birth certificate with English translation indicating that [REDACTED] was born in Francisco, Morazan, Honduras, on December 30, 1982, to [REDACTED] and [REDACTED]. The applicant also submitted photocopies of two employment authorization cards valid from July 6, 2000 to July 5, 2001 and August 20, 2001 to July 5, 2002, respectively, indicating that [REDACTED] has been granted TPS [REDACTED].

On December 4, 2003, the director rejected the appeal as untimely filed. The director stated in the Notice of Decision that the applicant's Form I-290B, Notice of Appeal to the Administrative Appeals Unit (AAU), was received at the California Service Center on December 12, 2003. The director further found that the appeal did not meet the requirements of a motion to reopen or reconsider pursuant to 8 C.F.R. § 103.5(a)(2) and (3), and reaffirmed his previous decision to deny the application.

On December 30, 2003, the applicant filed a motion to reopen and reconsider. On motion, the applicant states that her appeal was received at the California Service Center on December 2, 2003, and was, therefore, timely filed. She submits a photocopy of a Form I-797 notice acknowledging receipt of her Form I-290B at the California Service Center on December 2, 2003. The Form I-290B is also date stamped December 2, 2003. It is concluded that the applicant has established that her appeal was timely filed at the California Service Center on December 2, 2003.

Pursuant to 8 C.F.R. § 103.5(a)(1)(ii), the official having jurisdiction over a motion to reopen or a motion to reconsider is the official who made the latest decision in the proceeding. In this case, the director incorrectly rejected the appeal as untimely filed. The applicant, on motion, has overcome the basis for the rejection of her appeal. Therefore, the director's decision to reject the appeal is withdrawn and the motion is granted.

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 noted that the applicant indicated on the Form I-821, Application for Temporary Protected Status, that she did not enter the United States until 1999. The director, therefore, determined that the applicant had not established continuous residence in the United States since December 30, 1998, or continuous physical presence in the United States since January 5, 1999.

On motion, the applicant states that she is eligible for late registration as the daughter of an alien who is currently eligible to be a TPS applicant. She submits a photocopy of four Employment Authorization Cards showing that [REDACTED] has been granted TPS. However, the application was not denied because the applicant failed to establish eligibility for late initial registration. In fact, the director accepted the application as a late initial registration.

The director correctly denied the application because the applicant did not enter the United States until 1999, and, therefore, cannot establish continuous residence and physical presence in the United States during the requisite periods. 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.

Beyond the decision of the director, the applicant has not provided evidence of identity, and the application also may not be approved for this reason.

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 director's decision to deny the application is affirmed.