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

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[Redacted]

FILE:

[Redacted]

[LIN 02 242 52203]
[SRC 99 208 51245]

Office: NEBRASKA SERVICE CENTER

Date: JUN 23 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:

[Redacted]

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, Nebraska 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 continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999.

On appeal, counsel for the applicant submits a brief and photocopies of evidence previously submitted in response to the Notice of Intent to Deny dated August 16, 2003.

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 § 244.3;
- (e) Is not ineligible under § 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.

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 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 an initial Form I-821, Application for Temporary Protected Status, on June 22, 1999, under receipt number SRC 99 208 51245. On August 16, 2003, the applicant was requested to submit photo identification and evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. On November 20, 2003, the director denied the application 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. On July 17, 2002, the applicant filed the current Form I-821 with the Nebraska Service Center under receipt number LIN 02 242 52203.

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 Citizenship and Immigration Services

(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).

On November 20, 2002, the applicant was requested to submit photo identification and a photocopy of her birth certificate or passport, evidence to establish her eligibility for late initial registration, and evidence establishing entry into the United States prior to December 30, 1998, continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 15, 1999. This Request for Evidence related to the current Form I-821 filed on July 17, 2002. In response, counsel for the applicant stated that the applicant was not applying for late initial registration, but rather for the required annual re-registration for TPS. Counsel stated, "[redacted] has been a TPS applicant since June 22, 1999." Counsel submitted photocopies of CIS notices acknowledging receipt of the prior Form I-821; photocopies of CIS notices acknowledging receipt of Forms I-765, Application for Employment Authorization, on June 22 1999; July 24, 2000; July 5, 2001; and July 17, 2002; and, photocopies of the applicant's Employment Authorization Cards valid from August 23, 1999 through July 1, 2003. Counsel also submitted an affidavit from the applicant stating that she mailed the current Form I-821 to the Nebraska Service Center on June 28, 2002, and she didn't understand why her application was not received at the Nebraska Service Center until July 17, 2002.

On August 16, 2003, the applicant was requested to provide photo identification and evidence to establish her entry into the United States prior to December 30, 1998, her continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States since January 5, 1999. This Notice of Intent to Deny related to the applicant's prior Form I-821 filed with the Texas Service Center on June 22, 1999. In response, counsel for the applicant submitted the following:

1. the evidence detailed above that was previously submitted in response to the November 20, 2002, Request for Evidence;
2. an affidavit from the applicant stating that she first entered the United States from Reynosa, Mexico, on September 26, 1998, and has lived in the United States since that date;
3. an affidavit dated September 11, 2003, from [redacted] stating that she met the applicant at church in November 1998, and that the applicant lived in her home and took care of her children from December 1998 through September 1999;
4. an affidavit dated May 29, 1999, from [redacted] that she has known the applicant since October 5, 1998;
5. an affidavit dated May 29, 1999, from [redacted] stating that the applicant has lived with her from September 28, 1998 to the date of the affidavit;
6. an affidavit dated May 19, 1999, from [redacted] stating that she has known the applicant since September 28, 1998;
7. a Social Security Statement dated August 1, 2003;

8. the applicant's 1999, 2000, 2001, and 2002 federal income tax returns and her 1999 Missouri income tax return;
9. photocopies of pay statements from [REDACTED], address unknown, dated: October 19, 1999, December 31, 1999, January 25, 2000;
10. the applicant's 1999 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, from [REDACTED], reflecting an annual income of \$3616.00;
11. a Missouri Certificate of Live Birth indicating that [REDACTED] was born to the applicant on April 20, 2001;
12. photocopies of two 2001 IRS Forms W-2 from [REDACTED] headquartered in Dallas, Texas, reflecting an annual income of \$2477.90 and from [REDACTED] on Meremec in Clayton, Missouri, reflecting an annual income of \$1016.84;
13. photocopies of the applicant's pay statements from [REDACTED] for the following pay periods: November 25, 2001 through December 8, 2001; December 8, 2002 through December 21, 2002; December 22, 2002 through January 4, 2003; and August 3, 2003 through August 16, 2003;
14. photocopies of the applicant's 2002 IRS Forms W-2 from [REDACTED] and an illegible employer; and,
15. a photocopy of a monthly checking statement from Bank of America dated March 20, 2003;

The director determined that the applicant had failed to submit sufficient evidence to establish her entry into the United States prior to December 30, 1998, continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999, and denied the application on November 20, 2003.

On appeal, counsel for the applicant states that the applicant filed her initial application for TPS on June 22, 1999, and filed for "annual re-registration" [sic] each year since 1999. Counsel disagrees with the director's statement in the Notice of Decision that the applicant failed to submit any evidence to establish her qualifying continuous residence and continuous physical presence in response to the Notice of Intent to Deny. Counsel asserts that the applicant has submitted sufficient evidence to meet her burden of proof and has established continuous residence and continuous physical presence in the United States during the requisite periods. Counsel submits photocopies of the evidence previously submitted in response to the Notice of Intent to Deny dated August 16, 2003.

As stated above, counsel submitted the evidence detailed in Nos. 1 through 15 above in response to the Notice of Intent to Deny dated August 16, 2003. This notice related to the TPS application filed in 1999.

The applicant has submitted sufficient evidence to establish continuous residence and continuous physical presence in the United States since June 22, 1999, the date of filing of her initial TPS application. She has submitted only affidavits to establish her entry into the United States prior to December 30, 1998, her continuous residence in the United States from December 30, 1998 to June 22, 1999, and her continuous physical presence in the United States from January 5, 1999 to June 22, 1999.

In her affidavit dated September 5, 2003, the applicant explained that she lived with [REDACTED] at [REDACTED] Texas, for approximately two and a half months, from September 1998 to December 1998. The applicant further explains that in December 1998, she went to live with [REDACTED] in McAllen, Texas, where she babysat [REDACTED] children in return for room and board and "around \$100 a week." She states that she worked for [REDACTED] from Monday through Friday each week and returned to Ms. [REDACTED] home each weekend. [REDACTED] states in her affidavit dated September 11, 2003, (No. 3 above) that the applicant lived in her home located at [REDACTED], Texas, from December 1998 to September 1999, and took care of her children from Monday through Friday; however, she did not provide the exact dates of employment, nor does she indicate in her affidavit that the applicant was her employee and was paid a salary. She merely states that the applicant "came to live with us" and "took care of my children."

The applicant claims to have lived in the United States since September 28, 1998. It is reasonable to expect that she would have some other type of contemporaneous evidence to support these affidavits to establish her continuous residence in the United States from December 30, 1998 to June 22, 1999, and her continuous physical presence in the United States from January 5, 1999 to June 1999; however, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that she satisfies the residence and physical presence requirements 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.