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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: JUN 24 2005
[SRC 03 219 54279]

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, 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 continuously resided in the United States since December 30, 1998 and been continuously physically present in the United States since January 5, 1999.

On appeal, the applicant states she is a Honduras native and that she entered the US prior to 1999. She further states she is a minor child whose parents are Honduran natives under TPS. The applicant resubmits a copy of the English translation of her birth certificate and a copy of her mother's employment authorization card.

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.

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 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 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 his own statements. 8 C.F.R. § 244.9(b).

On February 5, 2004, the applicant was requested to submit evidence establishing her continuous residence since December 30, 1998, and continuous physical presence since January 15, 1999, in the United States. The applicant was also requested to submit documents to show eligibility for late registration. The applicant, in response, provided the following documentation:

1. A copy of an English translation of her birth certificate.
2. A copy of her mother's employment authorization card.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on March 25, 2004.

On appeal, the applicant reasserts her claim and resubmits the documents listed above.

The record contains a Form I-213, Record of Deportable/Inadmissible Alien, dated October 20, 2002 indicating that the applicant was apprehended by the United States Border Patrol after she illegally entered the United States by wading across the Rio Grande River. At that time she stated that she left Honduras on September 17, 2002 to

travel to the United States and that she was in route to Houston, Texas. The record also contains a copy of a Form I-821, Application for Temporary Protected Status, signed on August 6, 2001 by [REDACTED] in which she states that her daughter [REDACTED] was residing in Honduras on that date. Therefore she could not have met the criteria for continuous residence since December 30, 1998 and continuous physical presence since January 5, 1999. Consequently, the director's decision to deny the application for TPS is affirmed.

It is noted that on October 20, 2002, a Form I-862, Notice to Appear, was issued to the applicant ordering her to appear for a hearing before an immigration judge in San Antonio, Texas, at a time and place to be set. The record reflects that the applicant has been released on her own recognizance and that to date, she has not been scheduled to appear for her hearing.

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.