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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

MAY 20 2005

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[REDACTED]

FILE: [REDACTED]
[LIN 03 278 50225]

Office: NEBRASKA SERVICE CENTER

Date:

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

The applicant is a 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 failed to establish that she was eligible for late initial registration. The director also found that the applicant had 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 statement and additional evidence.

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. 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 her application with Citizenship and Immigration Services (CIS) on September 24, 2003.

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 first issue in this proceeding is whether the applicant has established continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999.

The applicant initially submitted the following evidence in an attempt to establish her qualifying continuous residence and physical presence in the United States:

1. an affidavit dated August 26, 2003, from [REDACTED] Junior, stating that he has known the applicant since February 1996, and that she was pregnant with his child as of the date of the affidavit;
2. a letter dated March 27, 2003, from the Associates For Women's Health, S.C., in Gurnee, Illinois, stating that the applicant was currently under medical care at their clinic for her pregnancy and that her expected due date was September 27, 2003;
3. a photocopy of an Illinois Marriage License indicating that [REDACTED] and the applicant were married in Waukegan, Illinois, on April 20, 2001; and,
4. an affidavit dated January 15, 2002, from [REDACTED] stating that she is the mother of [REDACTED] Junior, and that she has known the applicant since August of 1996, and that the applicant and her son were married on April 20, 2001.

On November 14, 2003, the applicant was requested to submit a photo identification document, evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods, and evidence to establish her eligibility for late initial registration. In response, the applicant submitted the following:

6. an affidavit dated December 12, 2003, from [REDACTED] stating that he is married to the applicant and he and the applicant are the parents of a United States citizen child born on September 21, 2003;
7. a photocopy of a mailing envelope postmarked December 17, 1998, addressed to the applicant at [REDACTED] Waukegan, IL 60087;"
8. a cash receipt dated February 28, 1998 in the amount of \$120;
9. a photocopy of a money transfer receipt indicating that the applicant sent money to Honduras on January 18, 1996;

10. a photocopy of the applicant's dental records from [REDACTED] DDS, showing that the applicant was a patient at their dental office from September 12, 1999 through December 29, 2000.

The director concluded that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods and denied the application on January 2, 2004.

On appeal, the applicant provides the following relevant evidence:

11. an affidavit from [REDACTED] stating that the applicant is his wife, and their United States citizen child, [REDACTED] was born on September 21, 2003, in the United States;
12. an affidavit dated January 15, 2002, from [REDACTED] stating that she has known [REDACTED] for 18 years and the applicant for five years. She further states that she has personal knowledge that the applicant has been part of the [REDACTED] family since 1996, when she started dating [REDACTED];
13. an affidavit dated January 15, 2002, from [REDACTED] stating that [REDACTED] is her brother, and she has known the applicant for five years. She further states that the applicant has been part of her family since 1996, and the applicant and her brother were married on April 20, 2001; and,
14. an affidavit dated January 15, 2002 from [REDACTED] stating that he and [REDACTED] work for the same company, and he has known [REDACTED] for 13 years and the applicant for six years.

It is concluded that the applicant has submitted sufficient evidence to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Therefore, the applicant has overcome this ground for the denial of the petition.

The second issue in this proceeding is whether the applicant has established that she is eligible for late initial registration.

The record of proceedings confirms that the applicant filed her application after the initial registration period for Hondurans had closed. 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 or 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 record indicates that the applicant was apprehended by the United States Border Patrol near Sarita, Texas, when she attempted to enter the United States without inspection. She was issued a notice ordering her to appear before an Immigration Judge for a deportation hearing. She failed to appear for her deportation hearing. On June 19, 1996, an Immigration Judge in Chicago, Illinois, ordered the applicant deported to Honduras in absentia.

On July 3, 1996, the Acting District Director, Chicago, issued a Form I-166 notice ordering the applicant to report to the Chicago District Office on August 5, 1996, for deportation to Honduras and a Form I-205, Warrant of Deportation. The applicant failed to appear as ordered, and the Warrant of Deportation is still outstanding.

As stated above, on November 14, 2003, the applicant was requested to submit evidence establishing her eligibility for late initial registration as set forth in 8 C.F.R. § 244.2(f)(2). In response, the applicant submitted the following:

1. a photocopy of a Form I-797C notice acknowledging receipt of a Form I-130, Petition for Alien Relative, filed on the applicant's behalf by her husband, [REDACTED] on April 25, 2001;
2. a photocopy of a Form I-589, Application for Asylum and for Withholding of Deportation completed by the applicant; and,
3. a Form I-221, Order to Show Cause and Notice of Hearing, dated December 19, 1995, ordering the applicant to appear for a deportation hearing before an Immigration Judge at a date and time to be determined.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application.

The applicant does not qualify for late initial registration based on the Form I-130 filed on her behalf by Mr. Carlson. The Form I-130 is a petition to classify an alien as the spouse of a United States citizen. It is not an application for withholding of removal, change of status, or adjustment of status as set forth at 8 C.F.R. § 244.2(f)(2).

Although the record contains a photocopy of a Form I-589 that appears to have been signed by the applicant on January 5, 1996, there is no indication in CIS records that the application was ever actually filed with CIS. Further, the applicant has not provided any evidence to establish that she had an asylum application pending before CIS during the initial registration period. Therefore, she has not established that she is eligible for late initial registration based on a pending asylum application. The applicant has not submitted any evidence to establish that she has met any of the other criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for temporary protected status on this basis 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.