

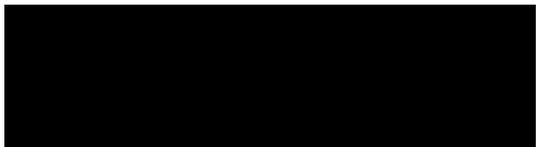


U.S. Citizenship
and Immigration
Services

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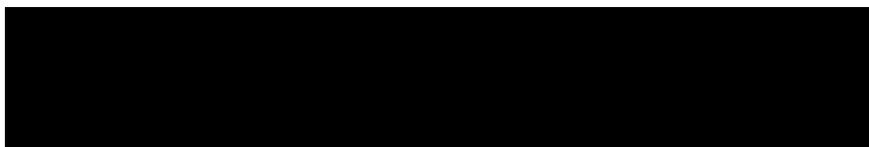


FILE: [REDACTED]
[EAC 04 199 52425]

Office: VERMONT SERVICE CENTER

Date: **OCT 31 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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont 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 her date of entry prior to December 30, 1999, her continuous residence, and her continuous physical presence in the United States during the requisite periods.

On appeal, 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. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. 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 initial TPS application with Citizenship and Immigration Services (CIS), on June 24, 2004.

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).

With her initial application, the applicant submitted photocopies of the following documentation: her Honduran birth certificate, with English translation; a Honduran Marriage Certificate, with English translation, reflecting her marriage to ██████████ in Honduras, on January 19, 1988; and, the Employment Authorization document (EAD) of ██████████ indicating his employment authorization under Category A12, with validity from July 6, 2003 through January 5, 2005.

On July 9, 2004, the applicant was requested to submit additional evidence establishing her date of entry into the United States, her continuous residence and her continuous physical presence in the United States. It is noted that the director's letter incorrectly indicated the required dates of continuous residence as February 13, 2001, and continuous physical presence as March 9, 2001, rather than the correct dates of December 30, 1998, and January 15, 1999.

The applicant, in response, provided photocopies of the following documentation: four pay statements in the name of ██████████ dated in February and March 2001; undated cards labeled "Oxford Health Plans Freedom Plan" and "Production Service and Sales, District Council Health Fund," also in the name of ██████████ and, the applicant's statement that she used the name ██████████ and the given Social Security number to work because she did not have proper documents in her own name.

The director determined that the applicant failed to submit sufficient evidence establishing her date of entry into the United States, and her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The director also noted that the applicant had failed to indicate that she had used any other names on her Form I-821, Application for Temporary Protected Status, or provide any evidence that the alias ██████████ is associated with her. Therefore, the director denied the application on August 12, 2004.

On appeal, the applicant states that she has been present in the United States "continuously," but does not specify any date of entry into the United States. In support of the appeal, the applicant submits a photocopy of the biographic page of her Honduran passport, indicating that it was issued in Honduras on June 20, 2000, and bearing the stamp of the Honduran Secretaria de Relaciones Exteriores. The applicant also resubmits copies of her marriage certificate and her husband's EAD card.

The applicant has failed to submit sufficient evidence to establish her date of entry prior to December 30, 1998, her qualifying continuous residence and her continuous physical presence in the United States during the requisite periods. The pay statements dated in February and March of 2001 are under a different name and social security number; the applicant provided no evidence outside of her own statements to corroborate her use of this alias. The applicant failed to explain the existence of such documents in light of her date of entry into the United States given on her Form I-821, as March 4, 2004. The applicant failed to submit other types of evidence of the forms specified at 8 C.F.R. § 244.9. The applicant has therefore, 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.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.