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FILE: [REDACTED]
[SRC 04 172 53412]

Office: TEXAS SERVICE CENTER Date: SEP 02 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:



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

On appeal, the applicant submits 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 4, 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).

The director determined that the applicant had failed to establish her continuous residence and continuous physical presence during the requisite periods, and denied the application on July 20, 2004. The director noted that the record indicated that the applicant had not entered the United States until September 13, 1999.

On appeal, the applicant now states that she entered the United States in "1998." In support of the appeal, the applicant submits photocopies of evidence relating to her residence and physical presence in the United States consisting of:

1. A Florida Certification of Immunization, with dates in September and November 1999;
2. A Collier County [Florida] Public Schools High School Grade Report dated November 25, 2002;
3. A Gulf Coast High School Interim Progress Report for the 2001-2002 school year;
4. A Collier County Public Schools Middle School Grade Report dated March 28, 2000; and,
5. A Collier County Public Schools, Naples High School Grade Report for the 2003-2004 school year.

It is noted that the applicant had previously submitted: her Honduran birth certificate, with English translation; a letter from her parents stating that the applicant entered the United States in the year 1999, and asking that she be incorporated in their approved TPS cases; the Employment Authorization documents (EAD) for both of her parents, under Category A12, with validity through January 5, 2005; and, documents pertaining to the applicant's removal proceedings, consisting of the applicant's release on her own recognizance dated September 8, 1999, the change of venue in immigration court from Phoenix, Arizona to Miami, Florida, and the approved motion dated January 5, 2000, administratively closing the applicant's removal proceedings with the notation "parents' application for TPS."

The evidence of record indicates that the applicant did not enter the United States until September 2, 1999, at or near Douglas, Arizona. The letter of the parents confirms the applicant's 1999 entry. Further, counsel, in a letter dated December 23, 1999, acknowledged the applicant's ineligibility for TPS, but requested administrative closure due to the applicant's age. The applicant, therefore, has not established her continuous residence and continuous physical presence in the United States during the requisite periods. Consequently, the director's decision that the applicant failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c), will be affirmed.

It is noted that the applicant now is asserting entry into the United States at a date earlier than her actual date of entry in an apparent attempt to gain benefits for which she is not otherwise eligible. Any misrepresentation of a material fact may also cause the applicant to be subject to further prosecutorial review.

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.