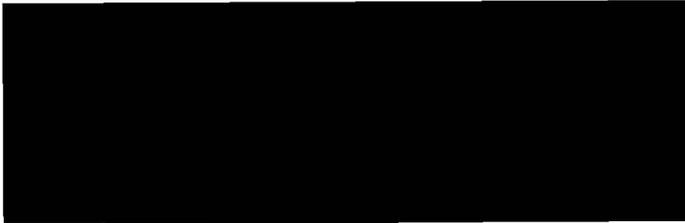




U.S. Citizenship  
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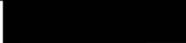
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FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: APR 06 2006

[EAC 03 218 51032]

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:



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 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 had failed to establish that she: (1) was eligible for late registration; (2) had continuously resided in the United States since December 30, 1998; and (3) had been continuously physically present from January 5, 1999, to the date of filing the application.

On appeal, the applicant submits a statement and resubmits evidence previously furnished and contained in the record of proceeding.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 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 condition described in paragraph (f)(2) of this section.

The term *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 term *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.

Persons applying for TPS offered to Hondurans and Nicaraguans 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 shows that the applicant filed her TPS application on June 28, 2003.

The burden of proof is upon the applicant to establish that he or 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 his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding confirms that the applicant filed her application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from January 5, 1999 through August 20, 1999, she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

In a notice of intent to deny dated May 7, 2004, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). She was also requested to submit evidence to show that she had continuously resided in the United States since December 30, 1998, and had been continuously physically present from January 5, 1999, to the date of filing the application.

The director determined that the evidence submitted, in response to his request, was insufficient to establish eligibility for the benefit sought and denied the application on February 23, 2005.

On appeal, the applicant requests reconsideration because she needs a work authorization in order to work legally in the United States so she could support her four children.

A review of the record of proceeding indicates that on March 12, 2001, the applicant attempted to enter the United States without inspection at the San Ysidro, California, Port of Entry by concealing herself in the trunk of a vehicle. An Order of Expedited Removal, Form, I-860, was issued, on March 13, 2001, and the applicant was removed to Honduras on March 28, 2001. On June 9, 2001, the applicant applied for admission into the United States at the San Ysidro, California, Port of Entry, by verbally stating that she was a United States citizen, and that she was born in the United States. During an oral interview, the applicant admitted that she is a national of Honduras, and that she was enroute to New Jersey to seek residence and employment. A Notice to Appear, Form I-862, was issued on June 9, 2001, finding the applicant inadmissible to the United States, pursuant to section 212(a)(6)(C)(ii) of the Act as an alien who falsely represented herself to be a citizen of the United States for any purpose or benefit under this Act, and pursuant to section 212(a)(9)(A)(i) of the Act as an alien previously ordered removed and again seeking admission within five years of the date of such removal without obtaining prior consent of the Attorney General. In a pre-trial appearance held on July 16, 2001, the Immigration Judge withdrew the section 212(a)(6)(C)(ii) charge, and the applicant was afforded the opportunity to file Form I-589, Application for Asylum and for Withholding of Removal. In removal proceedings held on August 1, 2002, the applicant's application for asylum and for withholding of removal were withdrawn, and the Immigration Judge ordered the applicant removed from the United States. There is no evidence in the record that the applicant departed from the United States as ordered.

The record indicates that the applicant initially attempted to enter the United States on March 12, 2001. Because the applicant entered the United States after the requisite period required for TPS, she could not have met any of the provisions described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the TPS application on this ground will be affirmed.

The next issue in this proceeding is whether the applicant has established continuous residence in the United States since December 30, 1998, and continuous physical presence from January 5, 1999, to the date of filing the application.

As noted above, the applicant filed her initial TPS application on June 28, 2003. In response to the director's notice of intent to deny dated May 7, 2004, the applicant submitted documentation dated from January 2003 to April 2004, in an attempt to establish continuous residence and continuous physical presence in the United States.

The director determined that the applicant had failed to establish continuous residence and continuous physical presence during the requisite period and denied the application on February 23, 2005.

On appeal, the applicant requests reconsideration because she needs a work authorization in order to work legally in the United States so she could support her four children. She resubmits evidence previously furnished and contained in the record of proceeding.

The applicant was not present in the United States during the period required to establish continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999. Therefore, she could not have met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application on this ground will also 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.