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U.S. Department of Homeland Security
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U.S. Citizenship
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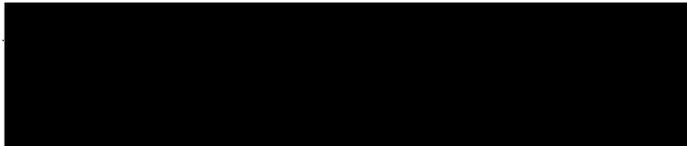


FILE: [REDACTED]
[EAC 99 197 50889]

Office: VERMONT SERVICE CENTER

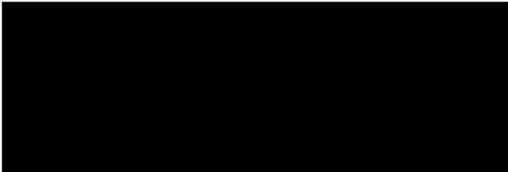
Date: DEC 18 2007

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, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and the case is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application will be approved.

The applicant is a native and citizen of Honduras who was granted Temporary Protected Status on November 29, 1999. The director withdrew the applicant's Temporary Protected Status on March 28, 2007, when it was determined that the applicant had failed to submit sufficient evidence to establish her continuous residence and continuous physical presence in the United States during the requisite time periods.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1).

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.

- (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.

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 January 5, 2009, upon the applicant's re-registration during the requisite period.

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 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 applicant initially submitted the following documentation:

1. Copies of Urgente Express money order receipts dated 1998 and February of 1999;
2. Copies of Western Union money order receipts dated May, October, November, and December of 1998, and January of 1999; and,
3. A copy of a postmarked letter addressed to the applicant and dated December of 1998.

The director determined that the TPS application had been approved in error and requested the applicant submit evidence to establish her continuous residence and continuous presence. The director noted that the handwritten

receipts and postdated letters could have been prepared by anyone and therefore, were insufficient to establish the applicant's presence in the United States.

The applicant failed to respond to the director's request for evidence. The director withdrew the approval of the TPS application on March 28, 2007, because the applicant failed to establish her eligibility for TPS.

On appeal, the applicant states that a representative misinformed her concerning her need to submit documentation as requested by the service center; and she submits the following documentation on appeal:

4. An affidavit from [REDACTED] in which he stated that the applicant rented a room from him at [REDACTED], New York, from 1995 to March of 2001;
5. Copies of electric utility bills bearing the applicant's name and dated May of 2001, January of 2002, February of 2003, March of 2004, September of 2005, June of 2006, and February of 2007;
6. Copies of gas utility bills bearing the applicant's name and dated January of 2002, March of 2004, July of 2006, and March of 2007;
7. Copies of postmarked envelopes bearing the applicant's name and dated December of 1998, September and December of 1999;
8. Copies of Western Union money gram receipts dated December of 1998, January, March, June, September, and October of 1999, and October of 2001;
9. Copies of Urgente Express money gram receipts dated September of 1991 and February of 1999;
10. A copy of a letter from the Pastor of the Holy Spirit Church in which he stated that the applicant has been affiliated with the parish since 1997;
11. A copy of a parish donor list addressed to the applicant from the Holy Spirit Church itemizing her monetary pledges dated from March of 1998 through February of 1999, and from March of 2002 through February of 2003; and,
12. An affidavit from an acquaintance of the applicant who stated that she has known the applicant to be in the United States since 1998, and that the applicant assists her in doing her housework from time to time.

The applicant has submitted sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to withdraw the approval of the application for this reason will be withdrawn.

Since the applicant has overcome the grounds for the withdrawal of the approval of her initial application for TPS, that decision is withdrawn. The record of proceedings contains sufficient evidence to establish the applicant's eligibility for TPS and does not reflect any other grounds that would bar the applicant from receiving TPS. Therefore, the initial application will be approved.

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 met this burden.

ORDER: The director's withdrawal of the approval of the initial application is withdrawn, and the application is approved.