



U.S. Citizenship  
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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: MAR 26 200

[WAC 05 140 76294]

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.

  
for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 not established: (1) 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; and (2) eligibility for late registration.

On appeal, counsel submits a statement.

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, 2007, upon the applicant's re-registration during the requisite time 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 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 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.

The record shows that the applicant filed her initial TPS application on February 17, 2005. The applicant submitted no evidence with her application to establish that she has continuously resided and has been continuously physically present in the United States during the requisite period.

The director noted that the applicant claimed to have entered the United States on May 3, 2003; therefore, the director concluded that the applicant had not maintained continuous residence since December 30, 1998 or continuous physical presence in the United States since January 5, 1999, and denied the application on June 24, 2005.

On appeal, counsel asserts that the applicant is eligible for TPS because she has a parent who had filed and been approved TPS.

The record of proceeding contains Form I-213, Record of Deportable/Inadmissible Alien, issued on May 3, 2003, indicating that on May 3, 2003, the applicant arrived at the Houston Intercontinental airport from Guatemala and attempted to gain entry into the United States by presenting a Honduran passport and Form I-551, Alien Registration Receipt Card, belonging to another person [REDACTED]. She stated during a

sworn statement that her true identity was [REDACTED] that she was traveling alone, and that she was not provided the documents by the individual who was with her. The applicant was determined to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act as an alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act. The applicant was subsequently released to her mother, [REDACTED] in removal proceedings held on January 18, 2006, in New York, the Immigration Judge (IJ) denied the applicant's Application for Asylum and for Withholding of Removal (Form I-589), and she was ordered removed from the United States to Honduras. The applicant appealed the decision of the IJ to the Board of Immigration Appeals (BIA). On February 8, 2006, the BIA dismissed the appeal and determined that the IJ's decision was final. Form I-205, Warrant of Removal/Deportation, was issued on April 26, 2006, based on the final order of the BIA.

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

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

The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The record shows that the applicant filed her initial TPS application on February 17, 2005.

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).

The director noted that the applicant claimed to be a national of Honduras and a child of an alien currently registered for TPS. The director, however, determined that the applicant was ineligible for late registration because the record indicates that she entered the United States on or about May 3, 2003, and denied the application on June 24, 2005.

On appeal, counsel asserts that regulations allow the applicant to untimely file applications where the applicant had a parent who had filed and been approved TPS.

Counsel's assertion is not persuasive. The regulation at 8 C.F.R. § 244.2(f)(2)(iv) simply allows spouses or children of aliens who are TPS-eligible to file applications after the initial registration period had closed; however, this regulation does not relax the requirements for eligibility for TPS. According to 8 C.F.R. § 244.2, an alien may in the discretion of the director be granted TPS if the alien establishes that he or she meets all the requirements listed in subparagraphs (a), (b), (c), (d), (e) *and* subparagraph (f)(1), or (f)(2), which includes (iv), in the applicant's case. The record, however, indicates that the applicant's date of entry into the United States was May 3, 2003.

The applicant was not present in the United States during the period required to establish eligibility. Accordingly, the applicant could not have met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application on this ground will also be affirmed.

Beyond the decision of the director, it is noted that although the record of proceeding contains a Honduran birth certificate and English translation, the certificate was not accompanied by photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1). Therefore, the application will also be denied for this reason.

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.