



U.S. Citizenship  
and Immigration  
Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: MAR 27 2007

[WAC 05 105 72832]

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, California 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 records indicate that the applicant had not maintained continuous residence in the United States since December 30, 1998, or continuous physical presence since January 5, 1999.

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 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 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 January 13, 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 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 director reviewed the record of proceeding and determined that the applicant had failed to establish continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999. He noted that evidence furnished by the applicant to establish residence and physical presence during the requisite period is dated only as far back as 2004, and that CIS records also indicate that the applicant did not enter the United States until July 16, 2002. The director, therefore, denied the application on January 30, 2006.

On appeal, counsel asserts that the applicant qualifies for TPS because she applied for TPS within 60 days of termination of a pending asylum application, and that the applicant does not, in fact, need to meet the physical presence requirements outlined in 8 C.F.R. §§ 244.2(b) and (c) because 8 C.F.R. § 244.2(g) has provided an alternate criteria for eligibility.

The record of proceeding contains Form I-213, Record of Deportable/Inadmissible Alien, issued on July 17, 2002, indicating that on July 16, 2002, the applicant was apprehended shortly after entering the United States

without inspection near Eagle Pass, Texas. She admitted at that time that she departed Honduras on July 12, 2002, boarded an airplane with a Honduran passport to Mexico where she boarded a bus and traveled through Mexico until arriving in Coahuila. There, she traveled on foot to the Rio Grande River where she waded across and illegally entered the United States. In removal proceedings held on June 24, 2003, the Immigration Judge granted the applicant voluntary departure on or before October 22, 2003, with an alternate order of removal to Honduras if she should fail to depart as required.

The record also indicates that on August 31, 1995, the applicant's mother [REDACTED] filed Form I-589, Request for Asylum in the United States. The asylum application included the applicant's name, but shows that the applicant was not in the United States. On March 23, 2003, the applicant was added as a dependent under [REDACTED] asylum case. Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105-100 (NACARA)), filed by [REDACTED] was approved on July 28, 2005. Also on July 28, 2005, [REDACTED] withdrew her application for asylum. The record indicates that that the applicant filed her initial TPS application on January 13, 2005, prior to the withdrawal of the Form I-589.

Counsel's assertions on appeal are not persuasive. 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 (ii), in the applicant's case. The record, however, indicates that the applicant's date of entry into the United States was July 16, 2002.

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). Additionally, 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 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.