



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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[REDACTED]

FILE:

[REDACTED]

Office: California Service Center

Date:

OCT 10 2007

[WAC 06 068 70121]

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:

[REDACTED]

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 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 record reveals that the applicant filed a late initial TPS application on December 7, 2005, under CIS receipt number WAC 06 068 70121. The Director, California Service Center, denied the TPS application on September 20, 2006, because the applicant failed to establish continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999. The director noted that in response to a notice of intent to deny to provide evidence of eligibility for TPS, the applicant submitted various documents from the applicant's parents; however, there was no evidence that pertains to the applicant's residency in the United States during the period required for Hondurans.

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 as 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 parole; 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.

Continuously physically present 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.

Continuously resided 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.

Brief, casual, and innocent absence 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 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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period, she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse/child of an alien currently eligible to be a TPS registrant, and she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

On appeal, counsel asserts the applicant's eligibility to file a late application for TPS as the applicant's parents are TPS registrants. The record establishes that the applicant's parent is a TPS registrant. Therefore, the applicant has established that she has met one of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). However, as

noted by the director, the applicant failed to submit sufficient evidence to establish that she had continuously resided in the United States since December 30, 1998, and had been continuously physically present since January 5, 1999.

Counsel also asserts, on appeal, that the applicant has met the requisite established continuous residence and continuous physical presence through her parents who qualify in her place. In effect, counsel asserts that the requisite continuous residence and continuous physical presence is imputed to the applicant through her parents as they are TPS registrants. However, pursuant to Section 244 (c) of the Act, and the related regulations in 8 C.F.R. 8 C.F.R. § 244.2, an alien who is a national of a designated state is eligible for temporary protected status only if such alien establishes that he or she has met the continuous residence and physical presence criteria for TPS. The applicant stated on the Form I-821, Application for Temporary Protected Status, that she did not enter the United States until June 21, 2005. It is also noted that the evidence of record establishes that the applicant attempted entry into the United States on June 21, 2005, and at that time she was apprehended and was placed in proceedings. Therefore, she cannot meet the requirements of continuous residence since December 30, 1998, and continuous physical presence in the United States since January 5, 1999.

As concluded by the director in his decision, every TPS applicant must fulfill all the requirements in order to gain TPS status; status cannot be acquired through any other person. The applicant has, therefore, failed to establish that she has met the residence and physical presence requirements described in 8 C.F.R. § 244.9(b) and (c). Consequently, the director's decision to deny the application for temporary protected status 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.