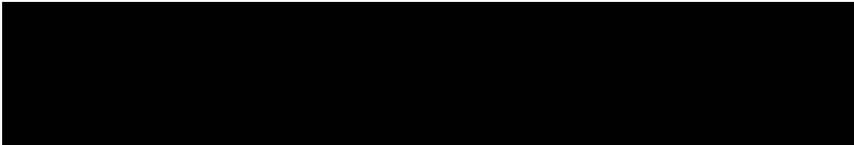




**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



MI

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: FEB 01 2008
[LIN 02 234 51517]
[LIN 99 206 51423]

INRE: 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: SELF-REPRESENTED

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 Director, Nebraska Service Center (NSC), denied the initial application. The director also denied a subsequent application for re-registration which is now before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua-sponte*, by the Chief, Administrative Appeals Office, and the appeal will be remanded for further action in accordance with this decision.

The applicant is a native and citizen of Honduras who seeks 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 failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant asserts that she has been physically present since December 28, 1998.

The record reflects that the applicant filed a TPS application on June 21, 1999 - during the initial registration period for Hondurans. In support of her application, the applicant submitted various documents to establish her identity, nationality, and, continuous residence and continuous physical presence, including:

- Her Honduran national identification card;
- An American Trans Air plane ticket, from Los Angeles California, to Chicago, Illinois, issued by Aviles Travel Agency in Los Angeles, on December 28, 1998, for travel on December 30, 1998; and,
- The applicant's December 30, 1998, boarding pass for the flight from Los Angeles to Chicago.

The director denied the application, finding that the applicant failed to establish her qualifying continuous residence and continuous physical presence. The applicant appealed that decision and the AAO dismissed her appeal on April 26, 2001 .

On July 10, 2002, the applicant filed the current application. Although the applicant indicated that she was filing for re-registration, the director treated it as an application for late initial registration. On September 23, 2002, the director requested that the applicant submit evidence that she was eligible for late registration. In response, the applicant submitted documents that included the following:

- The biographical data of her Honduran passport issued on June 9, 1999, in Chicago, Illinois;
- A pay stub from [redacted], for the pay period ending January 27, 1999;
- A pay stub from [redacted], dated April 12, 1999;
- A pay stub from Woodland Middle School, dated May 22, 2000; and,
- A 1999 Internal Revenue Service (IRS) Form W-2, with a social security number corresponding to the Woodland District #50 pay stub.

The AAO notes that the pay stubs contain different social security numbers, but finds that this does not preclude the applicant from submitting them to establish her residence and physical presence.

On January 7, 2003, the director denied the application, finding that the applicant had failed to establish her qualifying continuous residence and continuous physical presence.

On June 19, 2003, the applicant filed a subsequent application for re-registration. In support of the application, the applicant submitted photocopies of the following:

- [redacted] document (EAD) of her TPS registrant spouse, [redacted] and,
- her marriage certificate.

On July 14, 2003, the director requested that the applicant submit her original marriage certificate and an explanation of why she was now using her married name although she had been married since 1996, but had used her maiden name on all her CIS applications since 1999. In response, the applicant submitted the original marriage certificate (which was returned to her) and explained that she generally used her maiden name, as was the custom in her country. On November 17, 2003, the director denied the application, finding that the marriage certificate submitted by the applicant was unlike a typical Honduran marriage certificate and that the director was unable to determine if the marriage certificate was authentic,

On appeal, the applicant asserts that she has been in the United States since December 28, 1998.

The record reflects that the applicant is the spouse of an alien who is currently eligible to be a TPS registrant. There is no indication that the marriage certificate submitted by the applicant is not genuine. The applicant is eligible to file a late application for TPS under 8 C.F.R. § 244.2(f)(2)(iv). Moreover, as detailed above, the applicant did file an application during the initial registration period. Accordingly, the director's decision to deny the application on this ground will be withdrawn.

Furthermore, the evidence submitted by the applicant establishes her qualifying residence and continuous physical presence. The plane ticket shows that the applicant flew from Los Angeles to Chicago on December 28, 1998. The 1999 Form W-2, along with the corresponding pay stub, dated April 19, 1999, for the March 21, 1999, to March 28, 1999, pay period, reflects that the applicant was employed in 2001 from at least March 21, 1999. This pay stub shows earnings of \$581 for that pay period and year-to-date earnings of \$1,517, which indicates that the applicant worked for that employer during an unspecified period prior to March 21, 2001. The Form W-2 lists the applicant's address as [redacted], Waukegan, Illinois, an address the applicant had previously and has subsequently provided to the director. These documents indicate residence and physical presence in Waukegan, Illinois. The applicant has submitted sufficient credible evidence to establish her continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States since January 5, 1999, and has met the criteria described in 8 C.F.R. § 244.2(b) and (c).

The applicant has satisfied the continuous residence and continuance physical presence requirements cited by the director in the denial of the initial application, by establishing her continuous residence and continuance physical presence from the required dates in 1998 and 1999 to the date of filing of her initial application. The record contains a photocopy of the biographical page of the applicant's passport, which establishes her identity and her Honduran nationality. Therefore, the first application will be reopened *sua sponte*, in accordance with 8 C.F.R. 103.5(a)(5).

However, the application cannot be approved at this time because a Federal Bureau of Investigation (FBI) record indicates the applicant was arrested on November 2, 2005, by the Gurnee Police Department, for Retail Theft. A final court disposition has not been provided, nor is there an indication that one was ever requested. The applicant has otherwise satisfied all other requirements for TPS. Therefore, the initial application is reopened, and the file is remanded so the director may accord the applicant an opportunity to submit the final court dispositions of all her arrests. The director shall enter a new decision.

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.

ORDER: The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.