



U.S. Citizenship
and Immigration
Services

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FILE:

[EAC 03 210 52931]

Office: Vermont Service Center

Date:

FEB 05 2008

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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. 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, Vermont Service Center (VSC), and is now before the Administrative Appeals Office on appeal. The director's decision will be withdrawn and the appeal will be sustained.

The applicant is a native and citizen of Honduras who filed a late initial TPS application on July 8, 2003, under CIS receipt number EAC 03 210 52931. The Director, VSC, denied TPS on April 8, 2004, after determining that the applicant had failed to submit sufficient evidence, as requested in a January 28, 2004 notice of intent to deny, requesting that she submit evidence to establish her continuous residence and her continuous physical presence in the United States.

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 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.

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 initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed her initial TPS application with CIS, on July 8, 2003.

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).

It is noted that the applicant is the spouse of a TPS registrant, and therefore, she is eligible for late registration for TPS. 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, while the regulations may allow spouses of aliens who are TPS eligible to file their applications after the initial registration period had closed, these regulations do not relax the requirements of eligibility for TPS.

On appeal, the applicant reasserts her claim of eligibility for TPS. With her appeal, the applicant submits the following:

- 1) A copy of the Nassau University Medical Center, New York, computer record of the applicant's medical and hospital visits and admissions dated from November 25, 1996 through June 16, 2003, inclusive;

- 2) A copy of a statement, in the Spanish language, from [REDACTED], M.D., Pediatrician, Hempstead, New York, regarding dates of medical examinations of the applicant's child, [REDACTED] on December 28, 1996; January 28, 1998; October 7, 1998; December 23, 1999; and March 17, 2000;
- 3) A statement, dated April 29, 2004, from [REDACTED] indicating that the applicant babysat her two children, Monday through Friday, from 8 a.m. to 3 p.m., from November 2000 until May 2001;
- 4) A copy of a Honduran passport issued to the applicant on July 23, 2003, in New York; and,
- 5) A copy of a statement dated April 22, 2004, from [REDACTED] Pediatrician, for Nassau County, Department of Social Services, Hempstead, New York, listing the dates the applicant's two children [REDACTED] born on March 14, 2002, and [REDACTED] born on November 16, 1996) were seen, dated from July 1, 2002 through December 29, 2003, inclusive. Also included are immunization records of the two children.

The evidence furnished by the applicant on appeal, in conjunction with other evidence included in the record of proceeding, is sufficient to establish that she has met the continuous residence and continuous physical presence requirements described in 8 C.F.R. § 244.9(b) and (c). Therefore, the director's decision to deny TPS for these reasons will be withdrawn.

In addition, the record contains sufficient evidence to establish the applicant's eligibility for TPS and does not reflect any grounds that would bar the applicant from receiving TPS. The record contains evidence to establish the applicant's identity and nationality in the form of the biographic page of the applicant's Honduras passport. Therefore, the director's decision will be withdrawn, and the application will be approved.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden.

ORDER: The application is reopened and the director's denial of the application is withdrawn. The application is approved. The appeal is sustained.