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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **FEB 08 2008**
[WAC 05 267 70031]

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:



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

The applicant is a 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 determined that the applicant failed to establish she: 1) had continuously resided in the United States since December 30, 1998; 2) had been continuously physically present in the United States since January 5, 1999; and 3) was eligible for late registration. The director, therefore, denied the application.

On appeal, the applicant states that she is eligible for late initial registration for TPS because she is the child of a TPS-eligible alien. The applicant also submits evidence in support of this claim and submits evidence in an attempt to establish her qualifying continuous residence and 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, 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.

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.

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 to August 20, 1999. The record shows that the applicant filed this application on June 24, 2005.

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 is eligible for late registration.

The record of proceeding confirms that the applicant filed her application after the initial registration period had closed. 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). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

On May 31, 2006, the applicant was provided the opportunity to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing her nationality and identity, her continuous residence in the United States since December 30, 1998 and her continuous physical presence in the United States from January 5, 1999 to the date of filing the application. The applicant, in response, provided a copy of her mother's employment authorization card and provided evidence in an attempt to establish continuous residence and continuous physical presence during the

qualifying period. She did not present evidence of her eligibility for late registration. Therefore, the director denied the application.

On appeal, the applicant states that she is a qualified late initial registrant and has submitted sufficient evidence to establish her residency and date of entry. According to the applicant, she is the child of a TPS-eligible alien. The applicant also submits evidence of her parentage and evidence that her mother, [REDACTED] is a TPS recipient. Therefore, the applicant is eligible for late initial registration. Consequently, the director's decision to deny the application on this ground is affirmed.

The second and third issues in this proceeding are whether the applicant has established her continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States since January 5, 1999.

On appeal, the applicant also submits evidence in an attempt to establish her continuous residence and physical presence in the United States during the qualifying period. While regulations may allow children of TPS beneficiaries to file their applications after the initial registration period had closed; these regulations do not relax the requirements for eligibility for TPS. The child is still required to meet the residence and physical presence requirements as provided in 8 C.F.R. §§ 244.2(b) and (c). The applicant, as will be discussed below, submitted insufficient evidence to establish her continuous residence and continuous physical presence.

As stated above, the applicant was requested on May 31, 2006 to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the following documentation:

1. A copy of her mother's employment authorization card and the applicant's Honduran passport.
2. A copy of the applicant's immunization history showing inoculations on April 28, 1994, June 12, 1994, July 24, 2003, August 5, 1994, November 16, 1994, May 2, 1996, May 12, 1996, and July 24, 2003,
3. A copy of a Student Progress Report for 2005-2006.
4. A statement from the applicant's mother, [REDACTED]

The director concluded that the applicant had failed to establish her qualifying residence and physical presence in the United States during the requisite periods and denied the application. On appeal, the applicant submits statements from [REDACTED], and [REDACTED]. The applicant also resubmits evidence previously provided.

The applicant indicates on her application that she entered the United States on November 1, 1998. The immunization record indicates inoculations prior to this date. The remaining dates on the immunization history and the progress report are all dated subsequent to the qualifying dates to establish continuous residence and continuous physical presence. Consequently, the record is of no probative value in establishing the applicant's continuous residence and continuous physical presence. The applicant's mother states that the applicant arrived in the United States in November 1998, and that she did not put her children in school until 2001. However, the applicant's mother stated on her TPS application which was signed on February 11, 1999 and filed on March 8, 1999, that her child, [REDACTED] (date of birth February 10, 1994), resided in Honduras.

Furthermore, the applicant's mother stated on a subsequent re-registration application, signed on May 27, 2002 and filed on June 3, 2002, that her child [REDACTED] (date of birth February 10, 1994) resided in Honduras. On subsequent re-registration applications filed on July 7, 2003, December 7, 2004, and June 12, 2007, she states that the applicant whom she identified as [REDACTED] or [REDACTED] was residing with her in the United States.

[REDACTED], Parochial Vicar of [REDACTED] in Hapeville, Georgia, states in an affidavit dated August 25, 2006, that the applicant's mother has been a parishioner at his church "for a long time." However, he does not specifically state that the applicant was a parishioner or that he had any personal knowledge of the applicant. [REDACTED] and [REDACTED] state that they know that the applicant has lived in the United States since November 1998; however, these statements are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of residence or physical presence.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States since January 5, 1999. She has, therefore, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status on these grounds will be affirmed.

Beyond the decision of the director, it is noted that the applicant provided a photocopy of the first page of her passport in an attempt to establish her nationality and her identification. However, the passport was signed by the applicant and issued in Honduras on May 1, 2005. This is further evidence that the applicant has not met the continuous residence and physical presence criteria described in 8 C.F.R. § 244.2(b) and (c)

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.