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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: FEB 25 2008

[WAC 05 097 79198]

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (VSC), denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 respond to a request for evidence to establish her qualifying continuous residence and continuous physical presence in the United States.

On appeal, counsel for the applicant asserts that the applicant did not receive the request for evidence and submits additional documentation in support of her claim.

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.

The phrase 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.

The phrase 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 in the United States since January 5, 1999.

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. 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 time period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he or she fell within at least one of the four provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is on 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 record reflects that the applicant filed an initial TPS application [EAC 02 242 51146] with the director, VSC, on July 3, 2002 – almost three years after the close of the initial registration period for Hondurans.

On August 19, 2002, the director requested that the applicant submit evidence of her eligibility for late registration and her qualifying continuous residence and continuous physical presence.

On May 21, 2003, the director determined that the applicant had submitted sufficient documentation to establish her qualifying continuous residence and continuous physical presence, but denied the application because the applicant failed to show that she was eligible to take advantage of the late TPS filing provisions of 8 C.F.R. § 244.2.

On June 19, 2003, the applicant filed a motion to reopen, which the director granted on December 10, 2003.

On April 4, 2005, the director determined that the applicant was eligible to take advantage of the late initial TPS filing provisions of 8 C.F.R. through her father, but requested that the applicant submit documents to show

that she had been physically present in the United States from January 5, 1999, to the date of filing of her initial application, July 3, 2002. The director indicated that the applicant had submitted sufficient evidence to show that she had continuously resided in the United States through April 9, 1999, but that a large gap existed in her evidence from April 9, 1999, to July 2, 2002, the date of filing of her application. The director did not receive a response to the request.

On May 26, 2005, the director determined that the applicant had failed to establish her physical presence from January 5, 1999, to July 3, 2002, and denied the application.

On appeal, counsel for the applicant asserts that the applicant did not receive the director's request for evidence and submits additional documentation.

The documentation submitted by the applicant to establish her qualifying continuous residence and continuous physical presence includes her permanent record from [REDACTED] in Bronx, New York. This record indicates that the applicant was continuously enrolled in that school from September 3, 1997, to January 16, 2004. This document establishes that the applicant continuously resided in the United States from September 3, 1997, to July 31, 2002, the date of filing her initial TPS application. The applicant has submitted sufficient evidence 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 on this ground will be withdrawn.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements cited above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has met this burden.

ORDER: The appeal is sustained and the application is approved.