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

PUBLIC COPY

M

[REDACTED]

FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE:

JAN 03 2008

[EAC 06 24577227]

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:

[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 black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a citizen of Honduras who is applying for 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 that she had continuously resided in the United States since December 30, 1998, and had been continuously physically present in the United States since January 5, 1999.

On appeal, counsel asserts that sufficient evidence has been submitted to establish the applicant's eligibility as a child of a Honduran national. As evidence counsel provides copies of employment authorization cards for her parents, and both Honduran nationals.

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 designated by the Attorney General is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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.

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 designation of TPS for Hondurans has been extended several times, with the latest extension valid until January 5, 2009, upon the applicant's re-registration during the requisite time period.

It is noted that the applicant had previously filed an initial TPS application on June 4, 2004, under CIS receipt number SRC0417253412, which was denied by the Director, Texas Service Center, on July 20, 2004, because the applicant failed to establish qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant's appeal from the denial of her application was dismissed on September 2, 2005, as the AAO concurred with the director's findings.

The applicant filed the current TPS application on May 25, 2006.

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 director, in denying the current application, once again determined that the applicant had failed to establish qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The director noted that the applicant had not presented any additional and compelling evidence to overcome the basis for the denial of her initial application.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to establish her eligibility as a child of a TPS registrant. However, the basis for the denial of this application was not based on the premise that the applicant had not established eligibility as a dependent of a TPS registrant. Rather, the sole basis was the applicant's failure to establish qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

While the applicant has met the threshold requirement for late registration as during the initial registration period she was a child of an alien currently eligible to be a TPS registrant, this requirement alone does not

render the applicant eligible for the benefit being sought. The applicant must meet all other requirements, namely continuous residence since December 30, 1998, and continuous physical presence in the United States since January 5, 1999 as required in 8 C.F.R. § 244.2«(b) and (c).

On her initial and current applications, the applicant indicated that she first entered the United States on September 13, 1999 and September 8, 1999, respectively. The record contains a letter from her parents indicating the applicant had entered the United States in 1999. The evidence submitted in an attempt to establish the applicant's continuous residence and physical presence in the United States commenced November 1999. In addition, former counsel for the applicant acknowledged in a letter dated December 23, 1999, that the applicant was not eligible for TPS as she arrived after December 1998.

Accordingly, the applicant cannot establish her continuous residence and continuous physical presence in the United States during the requisite periods. Consequently, the director's decision to deny the application for TPS will be affirmed.

It is noted that the applicant was apprehended by the United States Border Patrol on September 2, 1999 near Douglas, Arizona and released on her own recognizance on September 8, 1999. On January 5, 2000, the applicant's case was administratively closed because of a finding that the applicant's parents were eligible for TPS.\

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. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.

Administrative closing of a case does not result in termination of the proceedings. It is merely an administrative convenience, which allows the removal of cases from the calendar in appropriate situations. See *Matter of Gutierrez-Lopez*, 21 I&N Dec. 479 (BIA 1996).