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U.S. Citizenship  
and Immigration  
Services

PUBLIC COpy

M-1

FILE:

Office: VERMONT SERVICE CENTER

Date:

JAN 22 2006

[EAC 06259 70395]

INRE:

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 (AAO) on appeal. The appeal will be dismissed.

The applicant is 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 her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, the applicant provides a statement.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS only if such alien establishes that she:

- (a) Is a national, as defined in section IOI(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
- (t) (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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, 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. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999.

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

The burden of proof is upon the applicant to establish that 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

The record reveals that the applicant filed a first Form 1-821, Application for Temporary Protected Status, with the California Service Center (CSC) on February 17, 2005 (WAC 05 140 74563 relates). The CSC director denied the application on May 10, 2006, because the applicant failed to establish her nationality and identity. An appeal from that decision, filed on June 8, 2006, was dismissed by the AAO on November 20, 2006. In his decision, the Chief, AAO, determined that although the applicant had provided sufficient evidence to establish her nationality and identity, she had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

The applicant filed the current Form 1-821 with the VSC on June 16, 2006. The VSC director denied the application on May 14, 2007. In his decision, the director determined that the applicant had failed to provide sufficient evidence to overcome the AAO Chief's decision regarding the applicant's failure to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The VSC director noted that the applicant had provided a baptismal certificate indicating that she was baptized in Honduras on May 4, 2002, thereby discrediting her claim to TPS eligibility.

On appeal, the applicant states that the baptismal document previously submitted is wrong, and that she was, in fact, baptized in Honduras in 1992.

A review of the documentation contained in the record reveals that the applicant is the child of an alien currently eligible to be a TPS registrant. Therefore, she is eligible for late registration under 8 C.F.R. § 244.2(f)(2)(iv). However, the late registration provisions do not relax the other requirements for eligibility for TPS.

The applicant, who was born on June 8, 1990, claims to have initially entered the United States without inspection in February 1997, returned to Honduras on June 5, 2004, and reentered the United States, again without inspection, on July 5, 2004. She states that she returned to Honduras in order to visit her grandmother, and that, upon reentry, was "captured and detained" by authorities for two days and then released. The applicant also has submitted affidavits from a relative and an acquaintance attesting to their knowledge of the applicant's presence in the United States since 1997, stating that the applicant's mother did not enroll her in school for fear of capture by the "Department of Immigration."

It is noted that there are discrepancies pertaining to the applicant's claimed date(s) of entry, residence, and physical presence. At the time of filing her first Form 1-821, the applicant did not indicate a date of entry. As previously discussed, she submitted documentation showing that she was baptized in Honduras in May 2002. She also has submitted a photocopy of the identification page from her Honduran passport, issued in Honduras in September 2004. Furthermore, there has been no evidence submitted or CIS records to support the applicant's claim that she was "captured and detained" in 2004. These discrepancies in the applicant's submissions have not been adequately explained and call into question the applicant's ability to document the requirements under the statute and regulations. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Camm. 1988).

The only objective evidence of the applicant's residence and physical presence in the United States before December 2004 (when she first attempted to file a TPS application at the CSC) is a photocopy of an envelope from Honduras postmarked December 30, 1997, that was addressed to her in the United States.

It is concluded that the applicant has not established that she has continuously resided in the United States since December 30, 1998, and has been continuously physically present since January 5, 1999. **Therefore**, she has failed to establish that she meets the criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the decision of the VSC director to deny the application on these grounds will be affirmed.

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 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.