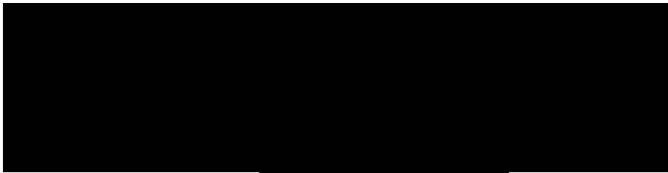




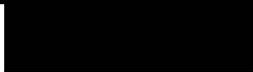
U.S. Citizenship
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FILE:



OFFICE: California Service Center DATE:

JUN 302008

[WAC 05 148742291]

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:



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 stated to be 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 record reveals that the applicant filed a TPS application during the initial registration period on June 3, 1999, under Citizenship and Immigration Services (CIS) receipt number SRC 99 189 50200. The Director, Texas Service Center, denied that application on November 2, 1999, because the applicant failed to establish that she has been continuously physically present in the United States since December 30, 1998. The record does not reflect that the applicant filed an appeal from the director's decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 25, 2005, under CIS receipt number WAC 05 148 74229, and indicated that this is her "first application to register for Temporary Protected Status (TPS)."

The director treated the application as a re-registration application and determined that because the applicant's initial TPS application had been denied, the applicant was not eligible to apply for re-registration for TPS.

The applicant, in this case, was not filing a re-registration application but, rather, she was filing her first or initial application; therefore, this decision of the director will be withdrawn, and a decision will be made based on late initial application. Accordingly, this application will be treated as the applicant's "first application" to register for TPS.

On appeal, the applicant states that she began traveling to the United States from Honduras at the end of December of 1998 and arrived at Laredo, Texas on or about February 11, 1999, where she was apprehended and inspected by Immigration and Naturalization Service (INS), now CIS. She further states that she was allowed to cross the border on condition that she appear at a hearing in San Antonio, Texas on February 18, 1999.

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
- (t)
 - (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.
- (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 (t)(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 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.

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed this application with Citizenship and Immigration Services (CIS) on February 25, 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 applicant has not submitted any evidence to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the decision to deny the applicant on her ineligibility for late registration will be affirmed.

The second issue in this proceeding is 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 asks CIS to waive the required continuous physical presence in the United States since January 5, 1999, and allow her to adjust status and work in the United States until she can safely return to Honduras. In addition, the applicant submits a copy of her birth certificate and an English translation; copies of MapQuest showing the distance between Laredo, Texas and San Antonio, Texas; and, copies of birth certificates for her children who were born on April 16, 2001 and February 28, 2003, in the state of Alabama.

The applicant is not eligible for TPS because she did not enter the United States until February 11, 1999, as she indicates on her TPS application and on appeal. Consequently, the applicant did not reside in the United States as of December 30, 1998, and was not physically present in the United States from January 5, 1999 to the filing date of this application. Therefore, she could not have satisfied the continuous residence and continuous physical presence requirements. Consequently, the application will also be denied for these reasons.

It is noted that the applicant was ordered deported *in absentia* by an immigration judge on December 15, 1999, based on her entry into the United States without inspection on February 11, 1999.

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 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.