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U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
[EAC 08 007 52471]

Office: VERMONT SERVICE CENTER

Date: OCT 06 2008

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.


Robert F. Wiemann, Chief
Administrative Appeals Office

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

The applicant claims 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 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, counsel for the applicant states that she has resided in United States since May 1998 and that she initially filed for TPS in September 1999. The applicant also 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 October 9, 2007. The applicant filed her initial TPS application on July 3, 2002. The Director, Vermont Service Center denied that application on January 9, 2003 because the applicant failed to establish continuous residence and continuous physical presence in the United States during the qualifying period. On January 27, 2003, the applicant filed an appeal of the director's decision. That appeal was dismissed by the AAO on October 27, 2004.

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 October 9, 2007, the applicant was informed that her application was being denied because the applicant failed to establish continuous residence and continuous physical presence in the United States during the qualifying period, and because the applicant failed to establish her eligibility for late initial registration

On appeal, counsel for the applicant states that the applicant entered the United States in May 1998 and initially filed for TPS in September 1999. According to counsel, the applicant also filed for TPS in 2001 and 2002. There is no evidence in the record that the applicant filed any documents with CIS prior to her 2002 TPS application. Counsel also contends that the applicant is eligible for TPS as the child of a TPS-eligible alien. 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). As discussed below, the applicant has not established continuous residence and continuous physical presence in the United States during the qualifying period. The applicant also submits evidence in attempt to establish her qualifying continuous residence and continuous physical presence in the United States. However, this does not mitigate the applicant's failure to file her TPS application within the initial registration period. The applicant has not submitted sufficient 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 director's conclusion that the applicant failed to establish his eligibility for late registration will be 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.

As stated above, the applicant was informed on October 9, 2007 that she had failed to establish her qualifying continuous residence and continuous physical presence in the United States. In support of her TPS application, the applicant submitted the following documentation:

1. Copies of the birth certificates of the applicant and her parents with English translations, the marriage license, with English translation for the applicant's parents,
2. Statements from [REDACTED], President of Iglesia Pentecostal Camino Al [REDACTED] and [REDACTED]

On appeal, the applicant resubmits evidence previously provided.

The birth certificates and marriage license establishes the applicant's relationship with her parents. Rev. [REDACTED] stated that the applicant has been a member of his church from May 1998 to June 2002. However, this statement has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 245.9(a)(2)(v). Specifically, [REDACTED] does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of her involvement with the church. Mr. [REDACTED] stated that the applicant worked for his company during September 1998. This statement also has little evidentiary weight or probative value as it lacks basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the affiant does not provide the address where the applicant resided during the period of his employment. It is further noted that the affiant did not indicate the duties of the applicant or the location of his business.

stated that he has known the applicant since June 1998 when she began working for him as a housekeeper twice a week. Ms. [REDACTED] stated that she has known the applicant since May 1998. Ms. [REDACTED] the applicant's aunt, stated that she knows the applicant arrived in the United States in May 1998 and has not left the country since then. However, these statements also have little evidentiary weight or probative value. 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. It is also noted that on the initial TPS application of the applicant's father he indicates that the applicant was living in Honduras at the time.

The applicant has not submitted sufficient evidence to establish her 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 also 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 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.