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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: APR 0 7 2004

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 P. Wiemann, Director
Administrative Appeals Office

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

The applicant is a native and 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. § 1254a.

The director determined that the applicant failed to establish that she has been continuously physically present since January 5, 1999. The director noted that the applicant's passport reflects that she left the United States and re-entered on October 10, 1999 and again on January 12, 2000. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the applicant left the United States on two occasions to visit her son who was gravely ill in Honduras. Counsel asserts that the applicant's departures were "brief, casual, and innocent absence(s)" and they do not prevent her from meeting the continuous physical and residence requirement for TPS.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state 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 condition described in paragraph (f)(2) of this section.

Continuously physically present 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 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. 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 current extension valid until January 5, 2005, upon the applicant's re-registration during the requisite time period.

The term brief, casual and innocent absence as used 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 of the absence from the United States or actions while outside the United States are not contrary to law.

The director, in his decision, noted that the applicant's passport reflects that she departed the United States and re-entered on October 10, 1999 and again on January 12, 2000. He concluded, therefore, that she could not have met the continuous physical presence requirement as stated above.

On appeal, counsel states that the applicant left the United States "on or around October 1 and returned to Miami, Florida on October 10, 1999 as well as left again on January 1, 2000 and returned to Miami, Florida on January 12, 2000." Counsel states that on both occasions the applicant went to Honduras to visit her son who was gravely ill. She submits a statement from Jorge Humberto Cuellar Erazo, the applicant's son, who states that he was hospitalized from September 27, 1999 to October 4, 1999, and that his mother, who was then in the United States, came to Honduras at his request to care for him during the first 10 days in October 1999. He states that she returned to the United States a few days after that time. He claims he suffered a relapse of his condition on December 31, 1999, and that his mother again came to Honduras from the United States to care for him during the first days of January 2000, after which she returned to the United States.

Even if the applicant's absences from the United States were in fact brief, casual and innocent as provided in 8 C.F.R. § 244.1, the applicant has not demonstrated that she has maintained continuous physical presence in the

United States since January 5, 1999. The applicant's passport shows entries into the United States on May 22, 1994; January 19, 1998; October 10, 1999; and January 19, 2000. The passport reflects that it was revalidated on September 28, 1999, in Honduras.

As evidence of continuous residence, the applicant has submitted a copy of a medical record dated May 28, 2000, envelopes addressed to her on March 11, 1998 and for the period March 12, 2001 to May 15, 2002, a sales receipt dated March 17, 2002, and shipping documents dated April 16, 1997; May 3, 1998, July 8, 1998, November 30, 1998; December 17, 1998; and October 25, 2000. She has also submitted copies of numerous money transfer documents for the period from October 22, 1999 to April 30, 2002. However, she has not submitted any evidence for the period between December 17, 1998 to October 10, 1999, when she re-entered the United States after visiting her son in Honduras. Consequently, the director's decision to deny the application on this ground will be affirmed.

Beyond the decision of the director, the record reflects that the applicant filed her TPS application on July 1, 2002. Aliens applying under the provisions for late initial registration must prove that they are eligible because during the initial registration period of January 5, 1999 through August 20, 1999, they fell within the provisions described in paragraph (f)(2) above. No evidence was furnished to establish that the applicant met the qualification for late registration, pursuant to 8 C.F.R. § 244.2(f)(2).

The burden of proof is upon the applicant to establish 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.