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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: APR 26 2004
[LIN 02 239 50234]

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: Self-Represented

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, Nebraska 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 claims to have entered the United States without inspection or parole on April 15, 1999. She 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 submit evidence to establish that she was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. The director also determined that the applicant had not submitted sufficient evidence to establish date of entry into the United States prior to December 30, 1998, continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999. The director, therefore, denied the application.

On appeal, the applicant's mother states that her daughter is a minor and is attending school. She claims that she has been a TPS registrant since the inception of the TPS program. The applicant's mother claims that she did not receive a notice of intent to deny her daughter's application 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 record reflects that the applicant filed her TPS application on July 11, 2002. In a notice of intent to deny dated December 19, 2002, the applicant was requested to submit: (1) a copy of her birth certificate or passport; (2) photo identification; (3) evidence to show that she had continuously resided in the United States since December 30, 1998; (4) evidence to show that she had been continuously physically present in the United States since January 5, 1999; and (5) evidence to establish that she was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. On January 21, 2003, the applicant's mother submitted a letter in which she claimed that the applicant had been in the United States since 1998. She stated that the applicant was a minor in [sic] that time, she just reached 21 years of age." She stated that the applicant was applying for TPS as a late registrant. The applicant's mother stated that she had been "in possession of the TPS card since the inception of the program." She submitted the following evidence for the applicant:

1) copies of biographical pages from the applicant's passport;

2) a September 20, 1999 letter from Waukegan High School in the Spanish language;

3) paycheck stubs in the applicant's name, dated July 1999, August 1999, September 1999, December 1999, February 2000, and May 2000; and ,

4) a 1999 IRS W-2 Wage and Tax Statement in the applicant's name.

The director determined that the applicant had failed to submit evidence to establish entry into the United States before December 30, 1998, continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999. The director also determined that the applicant had not submitted evidence to establish that she was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. On April 7, 2003, the director denied the application.

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.

On appeal, the applicant's mother states that she did not receive the December 19, 2002 notice of intent to deny her daughter's application. However, the record reflects that she responded to the December 19, 2002 notice on January 21, 2003, and she submitted the evidence listed in items 1-4 above. While she claims that the applicant entered the United States in 1998, the applicant stated on the Form I-821, Application for Temporary Protected Status, and on the Form I-765, Application for Employment Authorization, that she did not enter the United States until April 15, 1999. In addition, it is noted that the applicant stated on both application forms that she was born on December 11, 1989; however, the applicant's passport lists her date of birth as December 11, 1979. The record does not contain a copy of the applicant's birth certificate nor an explanation for the discrepancy concerning the applicant's date of birth. In addition, no evidence was furnished to establish that the applicant has met the continuous residence and physical presence criteria for TPS or that she is eligible for late registration.

The applicant has not overcome the findings of the director pursuant to 8 C.F.R. § 244.2(b),(c), and (f)(2). Consequently, the director's decision to deny the application for temporary protected status is affirmed.

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.