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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: APR 28 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]

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont 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. § 1254.

The director determined that the applicant failed to submit evidence to establish that she had met the continuous residence and physical presence criteria for TPS. The director, therefore, denied the application.

On appeal, counsel states that the applicant entered the United States without inspection in December 1998. Counsel submits evidence in an attempt to establish the applicant's qualifying residence and 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 condition described in paragraph (f)(2) of this section.

The term *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 term *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.

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

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reflects that the applicant filed her TPS application on May 18, 2001.

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 record of proceeding confirms that the applicant filed her application for TPS on May 18, 2001, after the initial registration period had closed. The applicant submitted the following documentation with her application for TPS:

1.) transcript dated February 7, 2000 from the Oakland Mills High School, Columbia, Maryland, for the 2nd Quarter 1999-2000, reflecting the applicant's grades for the first and second quarters of 1999-2000;
2.) transcript dated April 11, 2000 from the Oakland Mills High School, Columbia, Maryland, for the 3rd Quarter 1999-2000, reflecting the applicant's grades for the first, second, and third quarters of 1999-2000;
3.) transcript dated February 1, 2001 from the Oakland Mills High School, Columbia, Maryland, for the 2nd Quarter 2000-2001, reflecting the applicant's grades for the first and second quarters of 2000-2001;
4.) transcript dated April 5, 2001 from the Oakland Mills High School, Columbia, Maryland, for the 3rd Quarter 2000-2001, reflecting the applicant's grades for the first, second, and third quarters of 2000-2001; and
5.) a certificate awarded to the applicant for academic achievement during the 3rd Quarter 1999-2000.

At the time she submitted the application for TPS, the applicant also submitted a May 11, 2001 letter in which she stated that she had entered the United States on July 1, 1998, and that she had attended high school since September 1998. She also stated she had been "dedicated to her school "and she had neither worked nor sought employment.

On September 13, 2001, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing her qualifying residence and physical presence in the United States. The record does not reflect that the applicant responded to the notice.

On January 3, 2003, the applicant was again requested to submit evidence establishing her eligibility for late registration and evidence establishing her qualifying residence and physical presence in the United States. On January 14, 2003, counsel responded to the notice, stating that the requested evidence does not exist. Counsel stated that the applicant's mother, Irma Chincilla, "entered before December 30, 1998 and has a pending TPS application with evidence attached. (A94 385 182)." Counsel also stated that the applicant lived with her mother when she entered the United States in 1998, and that the applicant did not attend school until the beginning of 1999. In addition, counsel stated that "there is no employment, rent, or bank information available" in the applicant's name. Counsel submitted another copy of the February 7, 2000 transcript from Oakland Mills High School.

The director determined that the applicant had failed to establish that she had met the continuous residence and physical presence criteria for TPS and denied the application on April 8, 2003. On appeal, counsel states that the applicant entered the United States without inspection in December 1998. Counsel states that the applicant's mother declared the applicant on her "1998 taxes." She asserts that the applicant's mother could only have declared the applicant as a dependent if the applicant had been physically present in the United States. Counsel submits the following evidence:

6.) a copy of a 1998 Form 1040, U.S. Individual Income Tax Return, for the applicant's mother, Irma Chinchilla, which lists the applicant as a dependent;
7.) a statement from Julie Glover, who states that she has known the applicant since December 1998, and that they had worked together;
8.) a statement from Malcolm D. Scott, who states that he has known the applicant and worked with her since December 1998; and,
9.) a statement from Joe Silvermen, who states he has known the applicant since December 1998 when they worked together.

A review of the record reflects numerous contradictions between the applicant's statements and the evidence she submitted. On the initial Form I-821, Application for Temporary Protected Status, the applicant stated that she entered the United States on July 11, 1998. The May 11, 2001 letter submitted with the TPS application states that she entered the United States on July 1, 1998. Counsel stated in the January 14, 2003 letter that the applicant entered the United States in "1998;" however, counsel states on appeal that the applicant entered the United States in December 1998. The applicant stated in her July 11, 1998 letter that she had attended high school since September 1998. However, counsel stated in her January 14, 2003 letter that the applicant did not attend school until the beginning of 1999. The school transcripts described in items one and two, above, reflect the applicant's grades for the applicant's first quarter of the Quarter 1999-2000 period. The transcript does not indicate whether the 1st quarter 1999-2000 grading period began in January 1999 or September 1999. Nevertheless, the applicant's school records do not establish that the applicant was present in the United States before December 30, 1998.

Furthermore, the applicant stated in her July 11, 1998 letter that she had been "dedicated to her school" since she started attending in September 1998, and that she had neither worked nor sought employment. As stated above, counsel indicated in her January 14, 2003 letter that "there is no employment, rent, or bank information available" in the applicant's name. However, on appeal, counsel states that the applicant had a part-time job and submits affidavits from the individuals, described in items seven through nine above, that the applicant had worked with them as early as December 1998. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The 1998 tax return for the applicant's mother, which lists the applicant as a dependent, is not conclusive proof that the applicant met the continuous residence and physical presence criteria for TPS. The applicant has failed to submit any objective evidence to explain or justify the inconsistencies in her testimony. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that she has met the continuos residence and physical presence criteria for TPS.

Counsel also maintained that the applicant is the child of a current TPS registrant, and that as such she is eligible for late registration. However, pursuant to Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, an alien who is a national of a designated state is eligible for temporary protected status only if such alien establishes that he or she has met the continuous residence and physical presence criteria for TPS. The applicant has not established that she has met the requirements of continuous residence in the United States since December 30, 1998 and physical presence in the United States since January 5, 1999. In addition, 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 director's conclusion that the applicant had failed to establish her eligibility for late registration will be affirmed.

The burden of proof is upon the applicant to establish 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.