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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

MI

[REDACTED]

FILE: [REDACTED]
[EAC 03 191 50105]

Office: VERMONT SERVICE CENTER

Date: FEB 02 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: 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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 acting director denied the application because the applicant failed to establish she was eligible for late registration. The acting director also found that the applicant had failed to establish her continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999.

On appeal, the applicant states that she has been residing in the United States since 1998. The applicant indicates that she is sending a brief and/or evidence to the AAO within 30 days of filing the appeal. To date, no additional documentation has been received; therefore, the record is considered complete.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 244.3;
- (e) Is not ineligible under § 244.4; and
- (f)
 - (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 (f)(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.

The phrase brief, casual, and innocent absence, as defined 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 for the absence from the United States or actions while outside of the United States were not contrary to law.

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 initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The applicant filed her initial Form I-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) on June 4, 2003, more than three years and nine months after the initial registration period had expired.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

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 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).

On July 15, 2003, the director requested the applicant to submit evidence to establish her continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant was also requested to submit evidence to establish her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2).

A review of the record reveals that the applicant submitted the following documentation in support of her initial application, and in response to the director's request for additional evidence:

1. A photocopy of the identification page from her Honduran passport, issued in New York, New York, on June 18, 2002;
2. A photocopy of an extract of her Honduran birth certificate, with English translation, issued in Honduras on March 20, 1997;
3. Two affidavits from an acquaintance stating that they have known the applicant for five years;
4. A photocopy of a birth certificate showing that the applicant's son, [REDACTED] was born on [REDACTED] in Newark, New Jersey.
5. A letter, dated August 6, 2003, stating that the applicant had been employed by [REDACTED] Jersey City, New Jersey, since June 16, 1998.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on November 10, 2003.

The applicant has submitted no additional evidence in support of her appeal.

The first issue to be addressed in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding confirms that the applicant filed her initial TPS application on June 4, 2003, after the initial registration period had closed. A review of the record reveals that 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 failed to establish her eligibility for late registration will be affirmed.

The second issue to be addressed in this proceeding is whether the applicant has established her continuous residence and continuous physical presence in the United States during the requisite time periods.

The applicant claims to have lived in the United States since June 6, 1998. It is reasonable to expect that she would have a variety of contemporaneous evidence to support this claim. The applicant has submitted two affidavits from acquaintances (No. 3, above); however, affidavits from acquaintances are not, by themselves, persuasive evidence of residence or physical presence. Furthermore, No. 5 has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, it is not in the form of an affidavit and does not provide the address where the applicant resided during the period of her employment, the exact period(s) of employment, the period(s) of layoff (if any), and the applicant's specific duties with the company. Although No. 4 constitutes evidence that applicant was physically present in the United States as of January 20, 2000, when her son was born, that date is beyond the dates required for establishing continuous residence and continuous physical presence. Similarly, No. 1 was issued in the United States after the required qualifying dates.

It must be concluded that the applicant has failed to overcome the director's additional grounds for denial of the application. The applicant has not submitted sufficient credible evidence to establish her continuous residence in the United States since December 30, 1998, or 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 for these reasons, as well, will be affirmed.

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.