



U.S. Citizenship
and Immigration
Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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[REDACTED]

FILE:

[REDACTED]
[SRC 04 049 54427]

Office: TEXAS SERVICE CENTER

Date:

JAN 26 2005

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

PUBLIC COPY

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.

Cindy N. Gomez

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 applying for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant failed to establish that she was eligible for late registration. The director also determined that the applicant failed to establish her continuous physical presence in the United States since January 5, 1999. Finally, the director found that the applicant also failed to submit a photocopy of her current driver's license and birth certificate, with English translation.

On appeal, the applicant submits a statement and additional evidence in support of the appeal.

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 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.

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. 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 July 5, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed her initial TPS application with Citizenship and Immigration Services (CIS), on December 8, 2003.

The burden of proof is upon the applicant to establish that 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from 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 proceedings 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 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 late initial registration. 8 C.F.R. § 244.2(g).

On December 23, 2003, 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 continuous residence and continuous physical presence in the United States during the requisite periods. In addition, the applicant was requested to submit copies of her: birth certificate with English translation; current driver's license; and photo identification or a national identity document bearing a photograph and/or fingerprint. The applicant, in response, provided a copy of her Honduran national identity document issued on February 28, 1997, and documentation relating to her residence and physical presence in the United States.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on January 13, 2004.

On appeal, the applicant states that she has been living in the United States since 1997 and has evidence to demonstrate her residence here. She states that she would like the "apportunity [sic] to continue being legal in this country in which with a lot of difficulty [she has] lived here without having the apportunity [sic] of being employed and also given the chance to pay [her] taxes." In support of the appeal, the applicant submits photocopies of: her State of Florida Driver License issued on November 30, 2000; her birth certificate with English translation; and, six customer utility billing statements dated in 1999.

The applicant submitted evidence in an attempt to establish her qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file her application for Temporary Protected Status within the initial registration period. It is noted that on the Form I-765, Application for Employment Authorization, the applicant indicated both her manner of entry into the United States and her current immigration status as entry without inspection (EWI), while on the Form I-821, Application for Temporary Protected Status, the applicant indicated that she entered the United States without inspection, and listed her current immigration status as an F-1, nonimmigrant student. The applicant, however, presented no evidence to substantiate that she had been granted any type of nonimmigrant status. 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) and (g). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

The second issue in this proceeding is whether the applicant has established her continuous physical presence in the United States since January 5, 1999.

As stated above, the applicant was requested on December 23, 2003, to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the following documentation:

1. A photocopy of her Honduran national identity document issued on February 28, 1997;
2. A bill dated "[illegible]/22/99" from optometrist [REDACTED] .D., Miami, Florida;
3. Photocopies of generic money order, gasoline, parking, postal, and store receipts dated in 1999;
4. Photocopies of handwritten receipts in her name dated in 1999;
5. A letter dated August 23, 1999, from [REDACTED] Administrator, Baja Corporation, Miami, Florida, stating that the applicant was in the company's employ "for only a short period of time;"
6. A photocopy of an "Eye Exam Report" from an unidentified source dated May 22, 1999; and,
7. A photocopy of a report dated "12/2/99" from Medical Park Diagnostic, Inc., of unspecified location.

The director concluded that the applicant had failed to establish her qualifying continuous physical presence in the United States during the requisite period and denied the application.

On appeal, as stated above, the applicant submits photocopies of: her State of Florida Driver License issued on November 30, 2000; her birth certificate with English translation; and, six customer utility billing statements dated in 1999.

As noted in the director's decision, much of the evidence of record consists of generic receipts and documentation that cannot be directly linked to the applicant. Other than the Florida Driver License issued on November 30, 2000, the applicant has not submitted any additional evidence to establish her qualifying continuous physical presence in the United States after December 2, 1999. The letter of recommendation dated August 23, 1999, from the applicant's former employer, does not provide information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i)(A) through (D). She has, therefore, failed to submit sufficient evidence to establish that she has met the criteria described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application for temporary protected status on this ground will also be affirmed.

Finally, the director found that the applicant failed to submit a photocopy of her current driver's license and birth certificate, with English translation. As noted above, the applicant, on appeal, submits photocopies of these documents. The applicant, therefore, has overcome this finding of the director.

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.