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

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: Vermont Service Center Date: MAR 07 2007

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen or reconsider. The case will be reopened and the appeal will again be dismissed.

The applicant claims to be a 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 initially denied the application because for abandonment because the applicant had failed to respond to a request for evidence (RFE). The case was subsequently reopened and an additional RFE was sent to the applicant requesting evidence that she has been a resident of the United States since December 30, 1998, and present since January 5, 1999. The applicant failed to respond. The director denied the application on December 22, 2003.

A subsequent appeal from the director's decision was dismissed on August 5, 2005, after the Chief of the AAO also concluded that the applicant had failed to establish that she had maintained residence and presence during the required periods. On motion to reopen, the applicant reasserts her claim of eligibility for TPS and submits evidence in an attempt to establish her residence and presence during the required periods.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part:

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Motions for the reopening of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110.

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 TPS only if such alien establishes that he or she:

(a) Is a national of a 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 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.

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.

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 July 5, 2007, upon the applicant's re-registration during the requisite period.

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 contains sufficient evidence such that the applicant's presence and residence is generally corroborated for the period subsequent to July 1999. At issue is whether the applicant established a residence prior to December 30, 1998, and presence from January 5, 1999 through July 1999.

On motion the applicant has submitted an account activity statement from Money Gram International, signed by [redacted] International Coordinator, Refund Department, showing weekly entries dating back to December 22, 1998. This document does not reveal any new fact, and counsel for the applicant has not articulated why the document was not presented until now, after the application had already been denied for abandonment once, and after the director specifically requested this evidence on August 15, 2003. Nonetheless, the AAO has reviewed the document and would note that it bears only one entry prior to the period at issue, December 20, 1998. The record contains other receipts for money orders submitted by the applicant, including Money Gram International. One such receipt bears the date January 14, 1999, but this transaction is not listed on the account activity report presented on motion. This inconsistency reduces the credibility of these documents, and thus there probative value. 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Even when viewed in a light most favorable to the applicant, and in conjunction with the inconsistent second-tier affidavits submitted by the applicant, this evidence would only establish a periodic presence at best prior to January 5, 1999. It is not sufficient to establish that the applicant had established a residence prior to December 30, 1998.

On motion the applicant has submitted an affidavit dated August 20, 2005, signed by [redacted] stating that he has known that the applicant has lived at [redacted], Freeport, NY, from December 1998 to May 1999, and also states that he omitted an attestation in a prior affidavit that the applicant had worked for him from December 5, 1998. The letter states that the applicant lived at an address which was not formerly explained by the applicant, and which is inconsistent with the Money Gram Account Activity statement submitted by the applicant. The Money Gram Account Activity statement submitted by the applicant shows an address of [redacted] in Freeport, New York. The address of [redacted]'s restaurant establishment is [redacted] in Freeport, New York. The other addresses listed by this affiant are inconsistent with the applicant's representations and with other evidence submitted. The AAO appreciates [redacted] submission on behalf of the applicant, but the affidavit is of little probative value because of its inconsistent information. The inconsistencies indicate that either the document is false, or the accuracy of the affiant's recollections is doubtful. For this reason the document has little probative value.

On motion the applicant has submitted an affidavit dated August 10, 2005, signed by [redacted] stating that she has known that the applicant has resided at [redacted] Freeport, New York, since

December 1998. This document does not reveal any new fact, and the applicant has not articulated why this document was not submitted in response to the director's RFE. Nonetheless, the AAO would not that the various addresses listed for the applicant are inconsistent and raises doubts about the accuracy of the affiant's attestations. For this reason this affidavit is of little probative value.

On motion the applicant has submitted an affidavit dated August 18, 2005, signed by [redacted] and stating that he has known the applicant to work at the Taco Grill since December 20, 1998. This affidavit does not reveal any new fact, nor has the applicant articulated why this evidence was not presented in response to the director's RFE. Nonetheless, the AAO would note that the applicant fails to list the applicant's address during this period, fails to state the nature of his relationship or how he came to know the applicant, or provide any other verifiable information. For this reason this affidavit is of little probative value.

Counsel for the applicant has not presented any facts that can be considered new, has not articulated why the submitted evidence could not have been presented in response to the director's RFE, and has not articulated why the director's December 22, 2003 decision was incorrect as a matter of fact or law based on the record at the time of the decision.

The evidence submitted is not consistent, suffers from weak credibility, and is only marginally probative of establishing residence during the period at issue. Even when viewed in a light most favorable to the applicant, the evidence is simply not sufficient to establish that the applicant has been a resident of the United States prior to December 30, 1998, and physically present in the United States since January 5, 1999.

For the reasons listed above the motion for reconsideration will be denied. Neither submission states any adequate reasons for reconsideration, cites any precedent decisions in support of a motion to reconsider, or articulates that the decision was incorrect based on the evidence of the record at the time of the initial decision.

ORDER: The motion to reopen is dismissed. The decision of the director is affirmed.