

PUBLIC COPY

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



**U.S. Citizenship
and Immigration
Services**



MI

FILE:



Office: VERMONT SERVICE CENTER

Date: AUG 02 2005

[EAC 99 214 51269]

IN RE:

Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is 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 denied the application because the applicant failed to establish her continuous residence and her continuous physical presence in the United States during the requisite periods.

On appeal, counsel for the applicant provides additional documentation.

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 [REDACTED] 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, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for [REDACTED] was from January 5, 1999, through August 20, 1999. The record reflects that the applicant filed her initial application with the Immigration and Naturalization Service now Citizenship and Immigration Services (CIS), on July 1, 1999.

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 own statements. 8 C.F.R. § 244.9(b).

As previously stated, the record indicates that the applicant filed her TPS application on July 1, 1999. In a Form I-797, Notice of Action, dated November 19, 1999, the applicant was requested to submit evidence to show that she has been continuously residing and has been continuously physically present in the United States during the requisite timeframes. The applicant was also requested to submit a copy of her "Honduran passport and/or identity."

In a letter dated March 21, 2000, the applicant states that she filed her TPS application in June of 1998 and had not received her appointment to have her fingerprints taken. The applicant requested the status of her case.

In a notice of action dated April 6, 2000, the applicant was again advised to submit evidence of nationality and identity, evidence that she has been continuously residing in the United States since December 30, 1998, and evidence that she has been continuously physically present in the United States since January 5, 1999.

In a letter dated April 27, 2000, the Service, in response to the applicant's March 21, 2000 inquiry states, "We are unable to locate a petition or application based on the information you provided." The Service advised the applicant that in order to locate her application she would have to provide one or all of a list of documentation requested.

On November 9, 2001, counsel for the applicant, submits a "request to reconsider denial of TPS status. In a letter dated November 20, 2001, the Service advised counsel that if he wished "further consideration of the Center Director's decision you may submit a Motion to Reopen/Reconsider to this office in letter form." The Service also advised counsel that the "required fee of \$110.00 (U.S.) must accompany the Motion."

In a notice of action dated March 15, 2002, the Service advised the applicant "we have reopened the above application or petition, or reconsidered the decision previously issued. You will receive a notice under separate cover within the next several days once all action has been completed." In a notice to the applicant, dated May 30, 2003, the applicant was advised that on "March 15, 2002, this case was reopened on a BCIS motion, and the case is now in process." The applicant was also advised that it would take between 240 and 360 days to process "this kind of case." The applicant was further advised that a decision would be mailed "as soon as the processing is complete."

On July 3, 2003 and August 15, 2003, the Service sent to the applicant the following, which states in part, that:

On July 1, 1999, you filed a [sic] Application for Temporary Protected States I-821. On June 29, 2000, this petition was denied. However, it has come to our attention that the denial is not clearly correct. Therefore, the Service moves to reconsider its denial of your petition.

The applicant was advised to submit evidence to establish that she has been continuously residing in the United States since December 30, 1998, and that she has been continuously physically present in the United States since January 5, 1999. The applicant was afforded "60 days in which to submit evidence in rebuttal to this motion." The record indicates that the Service received no response from the applicant.

It is noted that the record contains no June 29, 2001, decision of the director's denial of the TPS application filed by the applicant on July 1, 1999. However, in its decisions dated July 3, 2003 and August 15, 2003, the Service notified the applicant of its reconsideration of its denial, dated June 29, 2001. In that decision, the applicant was given ample opportunity to respond to the Service's request for additional documentation for consideration in the approval of her TPS application. However, the record indicates that the applicant failed to respond to the Service's request. Consequently, in a decision dated, December 22, 2003, the director denied the TPS application, because the applicant failed to establish her continuous residence and her continuous physical presence in the United States during the requisite timeframes. Counsel, on behalf of the applicant, filed an appeal on January 24, 2004.

The issues raised by the director in his decision dated December 22, 2003, to be addressed in this proceeding, are whether the applicant has established her continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States since January 5, 1999. The applicant must also have been in the United States during the requisite timeframe and otherwise satisfy the requirements under 8 C.F.R. § 244.2, as stated above.

On appeal, counsel provided an affidavit from the applicant, dated January 21, 2004, in which she states, in pertinent part, that:

2. I entered the United States on or about December 1, 1998, near Phoenix, Arizona. I was not inspected nor admitted or paroled by an Immigration Officer.
5. I applied for TPS status in June 1999 but my application was received by the Vermont Service Center on July 1, 1999 at 8:49.
6. I want to explain to the Service that I did send the additional evidence requested this past August 15, 2003. Please see attached photocopies of 2 notarized affidavits.
7. The above mentioned affidavits were notarized and mailed on the 13th of October of 2003. One affidavit is from [REDACTED] and the other one is from [REDACTED]. Both of them are aware of my continuous physical presence in the United States because the first one was my boss from December 5, 1998 until March 2003 and the second person is my sister's husband.
8. Unfortunately, I did not send the additional evidence by registered mail. At that time I was busy looking to see if I could start a business and was running around in circles and forgot to register the evidence I mailed.
9. It was suggested for me to go to the post office to find out if I could obtain some kind of record. I did but was told that if it is not registered, they don't keep a record of the mail.
13. I believe that when I first applied for TPS I supported my application with affidavits of individuals that were aware of me and my presence in the US, unfortunately I did not keep a copy of those affidavits otherwise I would be sending them attached to this appeal.

Counsel submits: a copy of an affidavit, dated October 13, 2003, from [REDACTED] who states that he knows that the applicant has been in the United States since before December 1988, and that she has remained in the United States; a copy of an affidavit, dated October 13, 2003, from [REDACTED] who states that he knows the applicant has been in the United States since before December 1998, and that he first met the applicant on December 1, 1998, and that she has remained in the United States; a copy of the applicant's child's birth certificate filed on September 25, 2002, a copy of the applicant's Judgment of Divorce, dated April 20, 2001; a copy of a Discharge Notice, dated September 6, 2002, from South Nassau Communities Hospital; a copy of a New York State Lerner Permit issued on February 22, 2001; a Citibank Banking Card issued to the applicant for the period "08/00 thru 07/02;" a copy of a "Programa General De Immunizaciones En La Ninez, covering some periods in 2002 and some in 2003. It can only be assumed that these Immunization records are for the applicant's son, as it contains no name; and, copies of return receipts (PS Form 3811) addressed to Immigration and Naturalization, dated December 10, 1999 and July 1, 1999.

The documentation provided on appeal is not sufficient in establishing the applicant's day-to-day living in the United States from the onset of the requisite timeframes until the filing of her TPS application. In addition, number 7 in the applicant's affidavit presented on appeal, states that [REDACTED] was her boss in the United States from December 5, 1998 until March 2003," however, [REDACTED] makes no mention of that in his affidavit. The affidavits, without additional supporting documentary evidence to cover the periods from December 30, 1998, until July 1, 1999, the date of the above-mentioned return receipts addressed to the Service, are not sufficient or credible for meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Further, in her affidavit presented on appeal, the applicant, in number 13, states that she believes that "when I first applied for TPS I supported my application with affidavits of individuals that were aware of me and my presence in the US." However, the record contains no such affidavits. Consequently, the director's decision to deny the application for temporary protected status for these reasons will be affirmed.

An alien applying for TPS 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.