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U.S. Citizenship
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FILE: [REDACTED]
[SRC 99 230 54559]

Office: TEXAS SERVICE CENTER Date: AUG 30 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

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was initially denied due to abandonment by the Director, Texas Service Center (TSC), on October 25, 2002. Ordinarily, when an application is denied due to abandonment, the Administrative Appeals Office (AAO) has no jurisdiction. However, the abandonment denial was made in error, and therefore the appeal will be considered. The appeal will be sustained and the application will be approved.

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 initially denied the application after determining that the applicant had failed to respond to a request for additional evidence.

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

The applicant's attempt to submit her application for re-registration on June 16, 2003, and again on August 20, 2003, resulted in the return of her documents with notification that she did not need to re-register annually as her TPS application had been denied. The letter also specified that if she believed the notice had been sent in error she could resubmit her documentation with evidence of an approved Form I-821, Application for Temporary Protected Status. The applicant resubmitted her TPS application on September 22, 2003, along with a Form I-290B, Notice of Appeal, appealing the denial of her TPS applications.

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 the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on July 14, 1999.

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).

On January 31, 2002, the applicant was requested to submit evidence establishing her continuous residence in the United States since December 30, 1998.

The director determined that the applicant had failed to respond to the request, concluded that the applicant had abandoned her application, and denied the application on October 25, 2002. It is noted that the director's denial letter incorrectly stated that the request for additional evidence was sent on March 14, 2002; the file copy of the request for additional evidence included in the record is dated January 31, 2002.

Review of the record, however, reveals that the applicant did, in fact, respond to the request for additional evidence, and that the denial due to abandonment was, therefore, made in error. The record includes a response, postmarked on March 11, 2002, and received at the TSC on March 14, 2002, containing the applicant's copy of the request for additional evidence and the documentation she submitted in response to that request.

Consequently, the director's decision to deny the application for temporary protected status due to abandonment was made in error.

The additional evidence submitted by the applicant included: a Warrant for Arrest of Alien, issued at Brownsville, Texas, dated April 3, 1998, with a notation that bond was posted on April 28, 1998; a Notice of Hearing in Removal Proceedings, Harlingen, Texas, dated April 9, 1998; a State of Florida Identification card issued on November 10, 1998; and, a student identification card from Feinberg/Fisher Adult & Community Education Center, Miami Beach, Florida.

On appeal, the applicant asks for another opportunity to demonstrate her eligibility for TPS. She submits receipt notices for her applications filed in 1999, 2000, 2001, and 2002, and copies of her employment authorization documents (EAD), issued under Category C19.

It is determined that the record as a whole contains sufficient evidence to establish that the applicant has met the continuous residence and continuous physical presence criteria described in 8 C.F.R. § 244.2(b) and (c). The applicant also submitted photocopies of the biographic page of her Honduran passport issued in Honduras on

February 24, 1998, and her Honduran birth certificate, with English translation. She has also met the nationality requirement described in 8 C.F.R. § 244.2(a). Therefore, the director's decision will be withdrawn and the application will be approved.

It is noted that on April 3, 1998, the applicant was placed in removal proceedings, following her apprehension by the United States Border Patrol while attempting entry into the United States at or near Brownsville, Texas. She was subsequently ordered removed in absentia at Miami, Florida, on February 3, 1999.

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 met this burden.

ORDER: The appeal is sustained and the application is approved.