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U.S. Citizenship
and Immigration
Services

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[Redacted]

M

JAN 25 2005

FILE: [Redacted]

Office: NEBRASKA SERVICE CENTER

Date:

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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center. The Administrative Appeals Office (AAO) subsequently dismissed an appeal to the denial of the application, and the matter is now before the AAO on motion to reopen. The motion is granted. The appeal will be sustained.

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 on March 27, 2000, because the applicant failed to establish that she had continuously resided in the United States since December 30, 1998.

On appeal, counsel reiterated the applicant's claim of qualifying continuous residence and continuous physical presence in the United States during the requisite periods, and submitted evidence in support of the applicant's claim.

The director of the AAO dismissed the appeal on December 13, 2000, based on a finding that the applicant had not submitted sufficient evidence to overcome the basis for the denial of the petition.

On motion, counsel submits a brief and additional evidence.

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.

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 in the United States since January 5, 1999. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until January 5, 2005, upon the applicant's re-registration during the requisite time period.

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 August 27, 1999, the applicant was requested to submit evidence establishing her continuous residence since December 30, 1998, and continuous physical presence since January 15, 1999, in the United States. The applicant was also requested to submit evidence of identity and nationality. The applicant, in response, provided the following documentation:

1. a photocopy of the applicant's [REDACTED] #0303-1975-00164 bearing her photograph and thumbprint;
2. a notarized letter dated September 7, 1999, from [REDACTED] stating that the applicant worked for her as a babysitter from November 27, 1998 to January 12, 1999;
3. a letter dated February 2, 1999, from Tayco Screen-Printing in Colorado Springs, Colorado, thanking the applicant for helping with the printing of Super Bowl T-shirts; and,
4. a check stub from Tayco Screen Printing showing that [REDACTED] was paid \$111.79 on January 15, 1999.

The director determined that the applicant had failed to submit sufficient evidence to establish her continuous residence in the United States during the requisite time frame and denied the application on March 27, 2000.

On appeal, counsel reasserted the applicant's claim and submitted the following evidence:

1. an affidavit from [REDACTED] dated April 24, 2000, stating that the applicant worked for her as a babysitter three or four times per week from November 27, 1998 to January 12, 1999; and,
2. an affidavit from [REDACTED] stating the applicant signed a lease application for an rental apartment in a building he owns on January 2, 1999, and had that she had shared an apartment with [REDACTED] for at least four weeks prior to that date.

The director of the AAO dismissed the appeal on December 13, 2000, finding that the applicant had not submitted sufficient evidence to overcome the ground for denial of the petition.

On motion, counsel reasserts the applicant's claim and submits the following relevant evidence in support of the claim:

1. a photocopy of a rental application signed by the applicant on January 1, 1999, for an apartment located at [REDACTED]
2. pay checks issued by Tayco Screen Printing to the applicant on January 15 and February 5, 1999;
3. two undated time cards reflecting work performed by [REDACTED] one of them noted "Super Bowl;"

4. the applicant's pay statements for a company identified by counsel as Zeos for the period from February 28, 1999 to October 4, 2000;
5. pay statements from [REDACTED] for the period from October 16, 2000 to December 31, 2000; and,
6. a photocopy of the affidavit from [REDACTED] that was previously submitted on appeal.

Upon review of the evidence submitted on motion, it is concluded that the applicant has submitted sufficient evidence to establish continuous residence in the United States since December 30, 1998. The applicant has established that she has met the criteria described in 8 C.F.R. § 244.2 (c). Consequently, the prior decision of the AAO will be withdrawn, and the petition for temporary protected status will be approved.

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 sustained that burden.

ORDER: The prior decision of the AAO is withdrawn, and the appeal is sustained.