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U.S. Citizenship
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Services

MI

[REDACTED]

FILE: [REDACTED]
[EAC 01 254 51503]

Office: VERMONT SERVICE CENTER

Date: JUL 25 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:

[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.

Cindy N. Gomez

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 (AAO) on appeal. The decision of the director will be withdrawn. The case will be remanded for further consideration and action.

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 denied the application because the applicant failed to establish her continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999.

On appeal, counsel for the applicant submits a brief statement and additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 244.3;
- (e) Is not ineligible under § 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.

- (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. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reflects that the applicant filed her initial Form I-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) on August 1, 2001, more than one year and eleven months after the initial registration period had expired.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, she was either in a valid immigration status, had an application pending for relief from removal, was a

parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

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 record reflects that counsel submitted the following documentation in support of the applicant's initial TPS application:

1. A photocopy of the identification page from the applicant's Honduran passport, showing that it was issued in New York on February 21, 2000;
2. A photocopy of the identification page from a Honduran passport issued in New York on March 28, 2000 to [REDACTED];
3. A photocopy of a marriage certificate indicating that the applicant and [REDACTED] were married in Hempstead, New York, on May 21, 2001;
4. Photocopies of rent receipts issued to the applicant by [REDACTED], dated November 5, 1998; December 3, 1998; and, January 5, 1999;
5. Photocopies of New York State Benefit Identification Cards, issued to the applicant on October 4, 1999 and February 29, 2000;
6. Photocopies of Employment Authorization Documents (EAD's) issued to [REDACTED] on December 16, 1999, and July 6, 2000;
7. A photocopy of a hospital discharge statement, signed by the applicant on April 18, 2000; and,
8. A letter from the pastor of the Parish of [REDACTED] Hempstead, New York, dated July 24, 2001, stating that the applicant has been a parishioner for over three years.

On May 1, 2002, the director requested the applicant, through counsel, to submit evidence to establish her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit additional evidence to establish her continuous residence and continuous physical presence in the United States during the requisite time periods. The record reflects that, in response, the applicant submitted:

9. A photocopy of a birth certificate [REDACTED], born on December 6, 1999 in East Meadow, New York, showing the applicant and [REDACTED] as the child's parents.

The director determined that the applicant had failed to submit sufficient evidence to establish her qualifying continuous residence and continuous physical presence during the requisite time periods. The director denied the application on August 13, 2003.

On appeal, counsel for the applicant asserts that sufficient evidence has been submitted to establish the applicant's qualifying continuous residence and continuous physical presence during the requisite time periods. In support of the appeal, counsel submits photocopies of the following additional documentation:

10. MoneyGram International Money Transfer receipts, dated December 22, 1998; February 11, 1999; and, October 1, 1999. The month and day of a fourth receipt are not clear, but the year is noted as 1998.

Based on a review of the record, it is concluded that the applicant has provided sufficient evidence to establish her qualifying continuous residence in the United States since December 30, 1998, as well as her qualifying continuous physical presence in the United States since January 5, 1999. Therefore, the decision of the director to deny the application on these grounds will be withdrawn.

The record confirms that the applicant filed her initial Form I-821 after the initial registration period had expired. Although the applicant has submitted sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods, this evidence does not mitigate the applicant's failure to file her Form I-821 within the initial registration period. 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). It is noted that in the request for additional evidence dated May 1, 2003, the director clearly explained why the marriage on May 25, 2001, did not qualify the applicant as eligible under the provisions of late initial registration; however, in the denial, the director failed to state this reason for denial. To qualify for late registration under the provisions of 8 C.F.R. § 244.2(f)(2)(iv), the qualifying relationship must have existed during the initial registration period. Since the applicant, during the initial registration period, was not the spouse of an alien currently eligible to be a TPS registrant, she is not eligible for late registration. Therefore, the case will be remanded to the director for further consideration and the entry of a new decision based on the above discussion.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The decision of the director is withdrawn. The case is remanded to the director for further consideration and action.