



U.S. Citizenship  
and Immigration  
Services

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FILE:



[EAC 03 212 50692]

OFFICE: VERMONT SERVICE CENTER

DATE: OCT 17 2005

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.

for 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 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 had failed to establish that she: (1) was eligible for late registration; (2) had continuously resided in the United States since December 30, 1998; and (3) had been continuously physically present from January 5, 1999, to the date of filing the application.

On appeal, counsel submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 § 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 condition described in paragraph (f)(2) of this section.

The term *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 term *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.

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 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 first issue in this proceeding is whether the applicant is eligible for late registration.

The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The record shows that the applicant filed her TPS application on July 7, 2003.

It is noted for the record that the applicant filed an initial TPS application on June 17, 2002 [EAC 02-224-50470], after the initial registration period had closed. That application was denied on February 28, 2003, because the applicant had failed to establish eligibility for late registration. The applicant did not file a motion to reopen within 30 days from the date of the denial.

To qualify for late registration, the applicant must provide evidence that during the initial registration period from January 5, 1999 through August 20, 1999, she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

In a notice of intent to deny dated September 10, 2003, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant failed to respond. The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on March 4, 2004.

On appeal, counsel asserts that the applicant entered the United States in April 1998, she met and married a TPS beneficiary, and she has a United States-born son. He submits additional evidence, including a copy of the applicant's marriage certificate indicating that she married [REDACTED] in New York on January 27, 2002, and a copy of Mr. [REDACTED] Employment Authorization Card.

While the regulations may allow spouses of aliens who are TPS-eligible to file their applications after the initial registration period had closed, the record in this case shows that the applicant and Mr. [REDACTED] were not married prior to, or during the initial registration period from January 5, 1999 to August 20, 1999. Therefore, the applicant has failed to establish that she met the qualification for late registration, and that she falls within the provisions described in 8 C.F.R. § 244.2(f)(2).

The applicant has submitted evidence in an attempt to establish her qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file her Application for Temporary Protected Status 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). Consequently, the director's decision to deny the application on this ground will be affirmed.

The next issue in this proceeding is whether the applicant has established continuous residence in the United States since December 30, 1998, and continuous physical presence from January 5, 1999, to the date of filing the application.

The applicant originally submitted with her TPS application the following documents:

1. Copies of her Honduran birth certificate with English translation, and her passport issued in New York on January 22, 2002.
2. A copy of an International Courier receipt dated June 6, 1998.
3. A copy of a statement for a cable television service (Optimumtv) dated September 10, 1998.
4. Copies of two prescriptions for medications dated June 18, 1999.
5. A statement dated September 12, 2002, from [REDACTED] indicating that the applicant worked for her as a housekeeper from November 29, 1998 to present.
6. A statement dated September 12, 2002, from [REDACTED] Pastor of Restoration Pentecostal Church, indicating that the applicant has been a current member of the congregation since January 1999.

In a notice of intent to deny dated September 10, 2003, the applicant was requested to submit additional evidence to establish her qualifying continuous residence and continuous physical presence in the United States. The applicant failed to respond; therefore, the director denied the application on March 4, 2004.

On appeal, counsel asserts that the applicant entered the United States in April 1998, she is married to a TPS beneficiary, she has a U.S. citizen son, and she has been continuously residing in New York since May 1998. To support his claim, counsel submits:

7. A copy of a marriage certificate indicating that the applicant and Mr. [REDACTED] were married in New York on January 27, 2002, and a copy of Mr. [REDACTED] Employment Authorization Card.
8. An affidavit dated March 17, 2004, from [REDACTED] (the applicant's spouse) attesting to the applicant's continuous residence since May 1998.
9. An affidavit dated March 24, 2004, from [REDACTED] attesting that the applicant has resided in Freeport, New York, from April 1998 to the present.

10. An affidavit dated March 24, 2004, from [REDACTED] attesting that the applicant has resided in Freeport, New York, from April 1998 to the present.
11. A statement dated March 24, 2004, from FAJ Communications, Inc. indicating that the applicant has been a customer "for the past 5 years and she maintain using our services on a weekly basis."
12. A statement dated March 23, 2004, from Urgente Express, Inc. indicating that the applicant has been a client since 1998 and has been using their service on a biweekly basis.
13. A statement dated July 21, 2004, from [REDACTED] written in the Spanish language. No English translation accompanied this letter as required by 8 C.F.R. § 103.2(b)(3).
14. A copy of a New York birth certificate of the applicant's son born on April 7, 2003.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). The affidavits from Ms. [REDACTED] and Mr. [REDACTED] (Nos. 9 and 10 above) merely attest to the applicant's residence since April 1999; however, the affiants did not provide the applicant's address in New York, nor provide any details or specifics regarding the circumstances surrounding their acquaintanceship with the applicant. While FAJ Communications and Urgente Express (Nos. 11 and 12 above) both indicate that the applicant has been using their services on a weekly/biweekly basis, they did not indicate that they have personally seen the applicant in their establishment, nor is there evidence that any transaction was made with the establishment.

The employment letter from [REDACTED] (No. 5 above) has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the employer does not provide the address where the applicant resided during the period of her employment, the exact period(s) of employment, and the periods(s) of layoff, if any. Further, this letter was not supported by any other corroborative evidence, such as pay statements.

The statement from [REDACTED] Pastor of Restoration Pentecostal Church (No. 6 above), has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically the pastor does not explain the origin of the information to which he attests, and how he knows the applicant. Additionally, the pastor failed to show inclusive dates of the applicant's membership at the church, and the address where the applicant resided during the membership period.

Regulations at 8 C.F.R. § 244.9(a)(2) do not expressly provide that personal affidavits on an applicant's behalf are sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. Moreover, the statements provided to establish the applicant's qualifying residence in the United States were not supported by any other corroborative evidence.

Lastly, the documents detailed in Nos. 3, and 4 above, appear to have been altered. The original names on each of these documents seem to have been covered-over and the applicant's name has been inserted in their place. The applicant's name and account number on the Optimumtv statement (No. 3 above) was in a different font than that of the surrounding text. The applicant's name on the two prescriptions (No. 4 above) was in a different handwriting than that written by the physician. These documents are not considered credible and greatly reduce the credibility of other documents contained in the record of proceeding, including the affidavit from the applicant's spouse.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The remaining documentary evidence only establishes the applicant's residence and physical presence since January 2002. Therefore, the applicant has failed to establish that she has met the criteria for continuous residence since December 30, 1998, and continuous physical presence since January 5, 1999, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the TPS application on these grounds will also be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 failed to meet this burden.

**ORDER:** The appeal is dismissed.