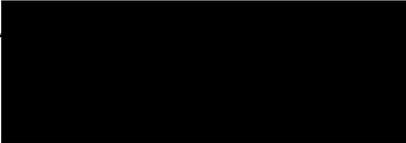


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Services

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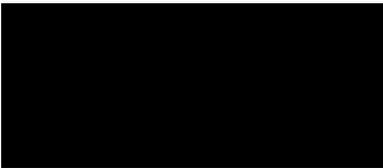
Office: TEXAS SERVICE CENTER

Date: **SEP 30 2005**

IN RE: Applicant: 

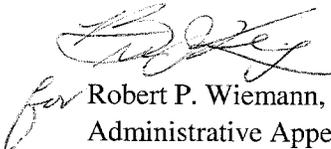
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) 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 determined that the applicant failed to establish she had continuously resided in the United States since December 30, 1998, and had been continuously physically present in the United States since January 5, 1999.

On appeal, counsel states:

The information received from the US Border Patrol concerning respondent's last entry is incorrect. The basis of the denial was on this incorrect information. Respondent has been present in the United States since approximately 1988 and has not departed since that time. The US Border Patrol erroneously assumed respondent had just recently crossed the border. In fact respondent had just come from the State of New York on her way to Dallas, Texas. She and her son were given a ride by a friend that lived in Mission, Texas. Respondent is attempting to secure evidence of that fact and will provide proof within the next 30 days or will request an extension, if necessary.

Counsel states that he was submitting a brief and/or evidence to the AAO within 30 days. However, no brief or additional evidence was submitted. Therefore, the record is considered complete.

Section 244(c) of the Act, and the related regulations at 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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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.

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. 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 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 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 record shows that the applicant filed her TPS application on June 17, 2002. The applicant indicated on her application that she entered the United States on May 15, 2001, subsequent to the eligibility period.

On appeal, counsel states the applicant has not left the United States since approximately 1988 and that the US Border Patrol information concerning her last entry is incorrect. Counsel submits no evidence to support his assertions. It is noted that the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988).

The record contains a Form I-213, Record of Deportable/Inadmissible Alien, dated May 15, 2001 indicating that the United States Border Patrol apprehended the applicant after she illegally entered this country by crossing the Rio Grande River using an inner tube. She admits leaving Honduras about May 1, 2001 to travel to the United States. Additionally, the applicant furnished a copy of her Republic of Honduras passport and it clearly shows that it was issued to her in that country on January 19, 2001.

The applicant is required to meet the continuous residence and continuous physical presence requirements as provided in 8 C.F.R. §§ 244.2(b) and (c). None of the evidence presented by the applicant establishes her continuous residence since December 30, 1998 and her continuous physical presence from January 5, 1999. Therefore, she cannot satisfy the continuous residence and continuous physical requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS is affirmed for these reasons.

The record reflects that on July 25, 2002, the applicant was ordered to be removed from the United States to Honduras by an immigration judge in Dallas, Texas.

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.