



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
[SRC 99 132 50812]

Office: HOUSTON DISTRICT OFFICE

Date: JUN 05 2006

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.

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the District Director, Houston, Texas, and the case is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who was granted TPS under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on June 10, 2000.

The district director may withdraw the status of an alien granted TPS at any time if it is found that the alien was not in fact eligible at the time such status was granted. Section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1). The district director withdrew the applicant's TPS on December 1, 2000, when it was determined that the applicant had failed to submit sufficient evidence to establish her continuous residence in the United States.

On appeal, counsel argues that the appellant's departure from the United States was due to emergent reasons and did not interrupt her continuous residence in the United States.

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 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.

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 since January 5, 1999. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed her application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on February 24, 1999.

In her affidavit dated December 27, 2000, the applicant states, in part:

In late May 1999, I heard that my brother [REDACTED] had been seriously injured by a gunshot in Honduras. I panicked and I left the United States and went to Honduras to see about my brother. In my worry about my brother, I did not take the time to ask the INS for permission to leave the United States and return.

My brother was in the hospital when I arrived in Honduras. Someone from the family had to be with him all the time. I helped care for him while he was in the hospital and also when he got out. My mother was very upset and she wasn't able to do much for him.

On September 26, 1999, my brother [REDACTED] was killed in a car accident in Miami. I had been planning to return to the United States, but when we got word of [REDACTED] death I knew I had to stay in Honduras for a while longer. I had to be there for my mother. [REDACTED] body was sent to Honduras and we had the funeral there, then I stayed with my mother and tried to help her get over the shock of his death.

In November 1999, my brother [REDACTED] had to be hospitalized again. When he got out, he had to stay in bed for six weeks. I stayed to take care of him.

When [REDACTED] was better, I looked for a way to come back to the United States. I couldn't fly because I didn't have a permit to re-enter the United States. I had to find a way to travel through Mexico. Eventually I was able to leave Honduras and I traveled through Mexico by bus. It was very difficult. I had to avoid Mexican immigration and I ran out of money several times and had to wait for someone to send me more. It took me almost two months to reach the United States.

I left the United States because of the emergency with my brother. I did not intend to be away long. Had it not been such an emergency, I would have asked for permission to leave and return. Once I got to Honduras, I found that I had to stay to help take care [REDACTED] and my mother, and to console my mother after my brother [REDACTED] died. Finally, my return was delayed because of the difficulty in traveling back to the United States.

On appeal counsel argues that [REDACTED] absence did not meaningfully interrupt her continuous residence and so she remains eligible for Temporary Protected Status. Counsel states that it is evident that the applicant left the United States for "emergent reasons," as her brother's injury was hardly to be expected. Counsel further states that she remained outside the United States for several months due to factors which were beyond her control including her second brother's death, her need to care for her brother [REDACTED] and the difficulty in arranging and making the trip back from Honduras. Counsel explains that without papers for entry, the applicant attempted to enter the United States without inspection on April 1, 2000, and that she was detained by the INS and placed in removal proceedings. Counsel asserts that her departure was not meaningfully interruptive of her physical presence in the United States and her appeal should therefore be sustained.

The record reflects that on April 2, 2000, the applicant was arrested by an officer of the Immigration and Naturalization Service, (now U.S. Immigration and Customs Enforcement), at the Falfurrias Traffic checkpoint on a northbound Greyhound bus traveling towards Houston, Texas. At the time of her arrest she was traveling with two of her children. At the time of her arrest, she stated that she had entered the United States by wading the Rio Grande River near Hidalgo, Texas without being inspected by an immigration officer. Additionally, she told the arresting officer that this was her first and only entry into the United States.

The burden of proof is upon the applicant to establish that she meets the above physical presence and residence requirements. 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 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.

On her Form I-821, Application for Temporary Protected Status, signed by the applicant on February 18, 1999, the applicant claimed to have entered the United States in January 1995, without inspection in California. The applicant left the United States in May 1999. Her initial application was approved on June 10, 2000.

Counsel argues that the applicant remained outside of the United States for several months due to factors that were beyond her control. However, the record reflects that the applicant did not return to the United States after her May 1999 departure until April 1, 2000, more than ten months later. In this case, the applicant has not shown that her period of absence was of short duration and could be considered as being reasonably calculated to accomplish the purpose(s) for the absence.

Additionally, as stated above, at the time of her arrest on April 2, 2000, the applicant told the officer that she had just entered the United States for the first time. However on her initial Form I-821, Application for Temporary Protected Status, filed on February 24, 1999, the applicant stated that her date of entry into the United States was in January 1995. 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

It is noted that, in removal proceedings held on July 16, 2001, an Immigration Judge (IJ), in Houston, Texas, ordered the applicant deported to Honduras. The applicant appealed the decision of the IJ to the Board of Immigration Appeals (BIA). On September 10, 2002, the BIA affirmed the decision of the IJ.

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.