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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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M.

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: MAR 07 2007
[WAC 05 104 82202]

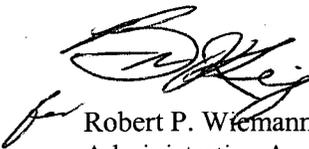
IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT: Self-represented

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 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.

On appeal, the applicant 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, 2007, 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 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 January 12, 2005. 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 April 24, 2002, 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 was also requested to submit additional evidence to establish 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. In response, the applicant submitted a copy of a marriage certificate indicating that the applicant and [REDACTED] were married in Honduras on March 26, 1988, and a copy of Form I-797, Notice of Action, advising Mr. [REDACTED] that his application for employment authorization had been approved. To establish continuous residence and continuous physical presence in the United States, the applicant also submitted copies of 21 pay statements dated September 25, 2001 to February 10, 2006, inclusive; Forms 1040, Income Tax Return for tax years 2002 and 2003; and school records of her three children dated 2005-2006.

The director determined that the evidence furnished by the applicant was insufficient to establish continuous residence and continuous physical presence during the qualifying period and denied the application on March 22, 2006.

On appeal, the applicant asserts that she first entered the United States on November 2, 1998, and has continuously resided since that date; that she departed from the United States to Mexico for about two days, and upon re-entry, she was arrested and placed in removal/deportation proceedings; that the two-day trip to Mexico did not end her continuous residence in the United States; and that she applied for late registration since she had a pending case with the 9th Circuit Court when she applied for TPS.

The record of proceeding contains Form I-213, Record of Deportable/Inadmissible Alien, issued on July 24, 2000, indicating that on July 24, 2000, the applicant and her three children (Lindaura, Fredy, and Sinthia) were apprehended shortly after entry into the United States without inspection near Laredo, Texas. The applicant stated to the officers that she and her three children traveled from Honduras to Guatemala by bus with an unknown male guide, and then traveled through Mexico and into the United States with the use of various guides whom she paid the total of \$3500. Form I-862, Notice to Appear, and Form I-200, Warrant for Arrest of Alien, were also issued on July 24, 2000.

In removal proceedings held on September 4, 2003, in San Francisco, California, the applicant's application for asylum and for withholding of removal was withdrawn, and the Immigration Judge (IJ) granted the applicant voluntary departure until January 2, 2004, with an alternate order of removal to Honduras. The applicant appealed the decision of the IJ to the Board of Immigration Appeals (BIA). On November 24, 2004, the BIA noted that the applicant had waived her right to appeal and, therefore, the case was not properly before them. The BIA further determined that the Immigration Judge's decision became administratively final upon the applicant's waiver of her right to appeal, the Board lacks jurisdiction over the case, and there is nothing now pending before the Board. A petition for review was subsequently filed with the Ninth Circuit Court of Appeals. On April 10, 2006, the Court denied the petition and a mandate was issued.

The applicant's assertion that she first entered the United States on November 2, 1998, and that she departed from the United States to Mexico for about two days, is not persuasive. As addressed above, and as noted on Form I-213, the applicant did not enter the United States until July 24, 2000. Additionally, the applicant stated on Form I-589, Application for Asylum and for Withholding of Removal, that her first entry into the United States was on July 24, 2000. There is no evidence in the record that the applicant was, in fact, present in the United States prior to July 24, 2000; nor did she submit any evidence to establish continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The applicant was not present in the United States during the period required to establish eligibility for TPS. Therefore, she could not have met the criteria for continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999, as described in 8 C.F.R. § 244.2(b) and (c). Additionally, the applicant could not have 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 TPS application will be affirmed.

Beyond the decision of the director, it is noted that although the record of proceeding contains a Honduran birth certificate and English translation, the certificate was not accompanied by photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1). Therefore, the application will also be denied for this reason.

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.