

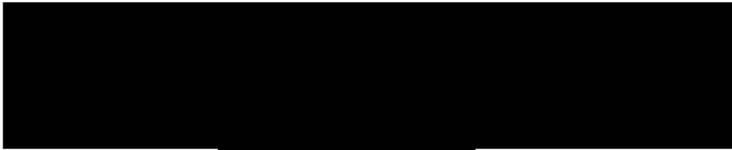
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



FILE: [REDACTED]
[EAC 06 245 73888]

Office: Vermont Service Center

Date: **APR 28 2008**

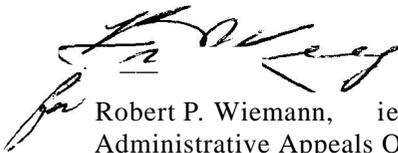
INRE: Applicant: [REDACTED]

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 Vermont Service Center. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
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 appeal will be dismissed.

The applicant is a 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 record reveals that the applicant filed a late initial TPS application on May 24, 2006, under Citizenship and Immigration Services (CIS) receipt number EAC 06 245 73888. The director denied the application on February 9, 2007, because the applicant failed to establish her continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States from January 5, 1999, to the date of filing her TPS application. The applicant also failed to submit a copy of her identity document.

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 as 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 section 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 conditions described in paragraph (f)(2) of this section.

Continuously physically present 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.

Continuously resided 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.

Brief, casual, and innocent absence 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. On May II, 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, 2009, upon the applicant's re-registration during the requisite period. The initial registration period for Hondurans was from January 05, 1999, through August 20, 1999. The record reveals that the applicant filed her initial application with Citizenship and Immigration Services (CIS) on May 24, 2006.

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).

It noted that at the time of filing her TPS application, the applicant was the minor child of a TPS registrant, and therefore, she is eligible for late registration for TPS. However, while the regulations may allow children of aliens who are TPS eligible to file their applications after the initial registration period had closed, these regulations do not relax the requirements of eligibility for TPS.

On appeal, the applicant reasserts her eligibility for TPS, and submits addition evidence, including identity documents.

The first issue in this proceeding is whether the applicant has established her identity.

It is noted that the applicant has established her identity. She submitted a photo identification issued by the Honduras consulate, and her Honduran birth certificate with an English translation. Therefore, the director's decision to deny TPS for this reason is withdrawn.

The next issue in this proceeding is whether the applicant has established her qualifying continuous residence and her continuous physical presence in the United States.

On appeal, the applicant submits photocopies of the following:

1. School records indicating her enrollment at the Kinloch Park Middle Community School from April 2003 to September 6, 2006;
2. Employment Authorization Documents for her parents [REDACTED], an [REDACTED];
3. TPS approval notices for her parents; and,
4. An Employment Authorization Document for the applicant, dated December 13, 2004.

Pursuant to Section 244 (c) of the Act, and the related regulations in 8 C.F.R. § 244.2, an alien who is a national of a designated state is eligible for temporary protected status only if such alien establishes that he or she has met the continuous residence and physical presence criteria for TPS.

The applicant has not submitted sufficient evidence to establish the requisite continuous residence and continuous physical presence in the United States. The record contains no evidence pertaining to the applicant's residence from December 30, 1998 to April 28, 2003. There is no waiver of these requirements, even for humanitarian reasons.

It is further noted that a review of the TPS applications filed by her father on April 26, 1999, and on June 25, 2001, shows that he had stated that the applicant was residing in Honduras during that period. Therefore, the applicant could not have met the requirements that she had continuously resided in the United States since December 30, 1998, and she had been continuously physically present in the United States since January 5, 1999. The applicant has, thereby, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Therefore, the director's decision to deny the application for TPS on these grounds will be affirmed.

As concluded by the director in his decision, every TPS applicant must fulfill all the requirements in order to gain TPS status; status cannot be acquired through any other person. The applicant has, therefore, failed to establish that she has met the continuous residence and continuous physical presence requirements described in 8 C.F.R. § 244.9(b) and (c). Consequently, for these reasons the director's decision to deny the application for temporary protected status will 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.