



U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]  
[WAC 05 083 74961]  
[REDACTED]

OFFICE: CALIFORNIA SERVICE CENTER Date: FESO 1 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 office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 (AAO) on appeal. The case will be remanded for further consideration and action.

The applicant claims to be 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 director denied the application because the applicant failed to establish that she was eligible for late registration. The director also denied the application because the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant states that she had previously filed an asylum application and was assigned alien registration **number** \_\_. The applicant asserts that her initial and re-registration TPS applications were filed under the same alien registration number, and she had also received employment authorization under said number.

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.

- (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 since January 5, 1999. The designation of TPS for Hondurans has been extended several times, with the latest extension valid until January 5, 2009, upon the applicant's re-registration during the requisite time period.

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999.

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 record reveals that the applicant has two alien registration numbers, [REDACTED] and [REDACTED]. The applicant had filed an initial and re-registration application with Citizenship and Immigration Services (CIS) using [REDACTED] and re-registration applications using [REDACTED].

Regarding [REDACTED], the record reflects that the applicant filed a Form 1-589, Application for Asylum and Withholding of Removal, on June 23, 1993, under the alias [REDACTED]. On November 1, 1995, a Form 1-221, Order to Show Cause and Notice of Hearing, was issued. On June 4, 1996, a Form 1-205, Warrant of Deportation, was issued because the applicant failed to appear for a deportation hearing on May 7, 1996.

On April 12, 1999, the applicant filed her TPS application (WAC9913053492) under [REDACTED]. The TPS application, which was filed under the applicant's true name contains a September 20, 2000, approved insignia stamp of the District Director, Los Angeles. The applicant's employment authorization was approved through December 5, 2000. As evidence to establish her continuous residence and physical presence in the United States, the applicant submitted: 1) a California identification card issued on July 25, 1991; 2) an identification card issued on February 17, 1999, by the Los Angeles County USC Medical

Center; 3) a Honduran passport; 4) a marriage certificate issued on February 10, 1997; and 5) her birth certificate with English translation.

Regarding \_\_\_\_\_ the record reflects that on April 29, 1991, a Form 1-221S, Order to Show Cause, Notice of Hearing and Warrant for Arrest of Alien, was issued under the applicant's true name. On December 10, 1991, an immigration judge ordered the applicant deported from the United States to Honduras. On April 18, 1992, a Form 1-205, Warrant of Deportation, was issued.

The record reflects that since January 3, 2001, the applicant has been using \_\_\_\_\_ for filing her re-registration and employment authorization applications.

On January 4, 2006, the Director, California Service Center, requested the applicant to submit evidence of her: 1) date of entry into the United States; 2) identity; 3) nationality; 4) continuous residence in the United States; 5) physical presence in the United States; and 6) eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant, in response, submitted:

- Copies of her Honduran passports issued on February 18, 1997, in Los Angeles, California and August 2, 2005.
- A copy of her birth certificate with English translation.
- Copies of her employment authorization cards issued under both alien registration numbers since September 21, 2000.
- Copies of her California identification card issued on September 16, 2003, and driver's licenses issued on May 12, 1997, and February 10, 2000.
- Notices of Actions, Form 1-797, dated May 18, 2000 and July 15, 2002, regarding the applicant's applications for employment authorization under both alien registration numbers.
- A notice dated May 26, 1999, requesting the applicant to appear on June 16, 1999, in order to be fingerprinted.

The director determined that the applicant had failed to establish she was eligible for late registration and failed to submit sufficient evidence to establish her continuous residence and physical presence in the United States during the requisite period. On April 12, 2006, the director denied the application.

On appeal, the applicant asserts, in pertinent part:

I was scheduled to appear before an INS official on 9/19/2000 & 10/11/2000 (See exhibits #7 & 8). When I went to the Immigration Official, I was questioned by him why I had 2 aliens' numbers. I explained to him that I was previously filed an Asylum and I was assigned this Alien # \_\_\_\_\_ and I used the name \_\_\_\_\_. I swear under oath to him that I will never use another name in the future other than my true name Aurora Concepcion Medina and my Alien # \_\_\_\_\_. This situation might cause a confusion to the Immigration Service. The INS official instructed me that I had to use the only Alien number: \_\_\_\_\_ and never will use again the other one Alien # \_\_\_\_\_.

Even though I was instructed by the USCIS that my Alien number was \_\_\_\_\_ I received a request for evidence on 11/28/00 with the old Alien number \_\_\_\_\_. (See exhibit #10). I sent right away the information requested.

When I applied for Re Registration on my TPS on 2002 (Exhibit #14) my case was transferred again to the INS at Room [REDACTED] Los Angeles, CA (Exhibit #15) I had another appointment with an Immigration official and again I explained him my situation and my work permit was granted.

On appeal, the applicant submits copies of documents that were previously submitted along with:

- A California identification card issued on April 14, 1997.
- Forms 1040 for 1999 through 2005 and wage and tax statements from 2003 through 2005.
- A letter dated June 22, 2000, from [REDACTED] former principal of [REDACTED] Middle School in Los Angeles, California, who indicated he has been acquainted with the applicant for the past three years. The affiant asserted that the applicant has been the president of the school's Bilingual Advisory Counsel.
- A letter dated February 25, 2002, from [REDACTED] i, principal of [REDACTED] Bancroft Middle School in Los Angeles, California for 2001-2002, who attested to the applicant duties as the Bilingual Parent Advisory Council **president.**
- A letter dated September 2, 2001, from Reverend [REDACTED] of Trinity Episcopal Church in Los Angeles, California, who indicate t e app lca nt a been a contributing member since 1998. The affiant indicated that the applicant serves as Lector and Lay Eucharistic Minister in the worship service and teaches first communion classes to approximately 50 students.
- A letter dated January 17,2006, from [REDACTED] supervisor case management, and Christina Madrid, case management aide of Hollywood Senior Multipurpose Center, who indicated that over the last several years the facility has worked with the applicant.
- Notices of Actions, Form 1-797C, regarding the applicant's TPS application and employment authorization cards.
- Forms G-56 dated July 22, 2000, and July 24,2000, which requested the applicant appear for an interview on September 19,2000, and October 11,2000, respectively regarding his TPS.
- Form 1-72 dated September 19,2000, which requested the applicant submit a written statement indicating the number of times she had been placed in deportation proceedings.

The documents submitted throughout the application process establish the applicant's continuous residence and physical presence in the United States during the requisite periods as described in 8 C.F.R. § 244.2(b) and (c). The evidence in the record clearly reflects that the applicant had filed a TPS application during the initial registration period and, therefore, the issue of late registration is moot.

Therefore, the director's decision to deny this current application will be withdrawn, and will be considered to be a re-registration application.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above. Here, the applicant has met this burden.

Nevertheless, as a result of the applicant's failure to attend her removal proceedings on May 7, 1996, she is inadmissible under section 212(a)(6)(B) of the Act. However, such grounds of inadmissibility may be waived. The record does not reflect that a Form 1-601, Application for Waiver of Grounds of Inadmissibility, has been filed. The case will be remanded so that the director shall provide the applicant the opportunity to file a Form 1-601, pursuant to section 244(c)(2)(A)(ii) of the Act; 8.C.F.R. § 244.3(b), An adverse decision on the waiver application may be appealed to the AAO.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.