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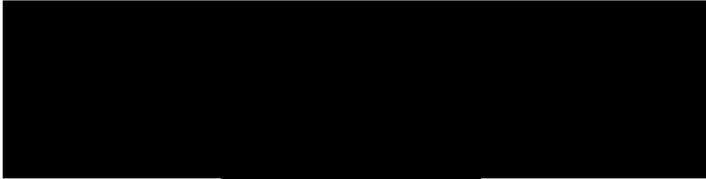
U.S. Department of Homeland Security
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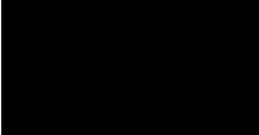
U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

Date: FEB 19 2008

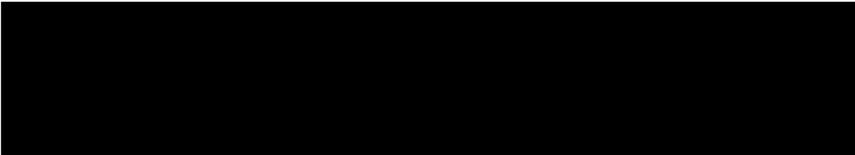
[EAC 99 181 51060]

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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal.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 been continuously physically present in the United States since January 5, 1999. The director, therefore, withdrew the applicant's temporary protected status.

On appeal, counsel for the applicant states that the director factually and legally erred in withdrawing the applicant's temporary protected status.

Sections 244(c)(3)(A) and (C) of the Immigration and Nationality Act (Act) provide that the Secretary of Homeland Security (Secretary) shall withdraw TPS granted to an alien if "the alien was not in fact eligible for such status" or if "the alien fails, without good cause to [re-register...in a form and manner specified by] the Secretary. Title 8 of the Code of Federal Regulations (CFR), part 244.14(a)(1) and (3) further state that the director may withdraw the status of an alien granted TPS if "the alien was not in fact eligible at the time such status was granted, or, at any time thereafter ineligible for such status" or if "the alien fails without good cause to [re-]register.

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.

The term *continuously physically present*, as used in 8 C.F.R. § 244.1, means actual physical presence in the United States since January 5, 1999. 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 term *continuously resided* as used in 8 C.F.R. § 244.1 means residing in the United States for the entire period specified in the regulations and since December 30, 1998. 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 *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.

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 January 5, 2009, 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 initial registration period for Hondurans was from January 5, 1999 to August 20, 1999. The record shows that the applicant filed her initial TPS application on March 8, 1999. On November 2, 2002, the director noted that the applicant's latest TPS re-registration indicated that she last entered the United States on August 4, 2000.

The applicant was provided the opportunity to submit evidence establishing her continuous residence since December 30, 1998, and continuous physical presence since January 15, 1999, in the United States. The applicant, in response, provided:

1. A statement from her counsel at the time.
2. A personal statement from the applicant.
3. A Form I-862, Notice to Appear, under file number [REDACTED] in conjunction with removal proceedings, indicating the applicant entered the United States on August 4, 2000.
4. A copy of a Form I-512, Authorization for Parole of an Alien into the United States, dated April 11, 2000.
5. A copy of a Form I-797C, Approval Notice for TPS dated November 19, 1999.
6. A copy of her Honduran passport issued in New York, New York on April 28, 2000.
7. A copy of her Town of Brookhaven, New York marriage certificate dated April 24, 2001.
8. A copy of the birth certificate of the applicant's daughter born on September 18, 2001 in New York.

The director determined that the applicant failed to submit sufficient evidence to establish her continuous residence and continuous physical presence in the United States during the qualifying period. Therefore, the director withdrew the applicant's temporary protected status.

On appeal, counsel for the applicant states that the director erroneously withdrew the applicant's temporary protected status. The applicant resubmits documentation previously provided in response to the request for additional evidence. In his statement, the applicant's previous counsel stated that the applicant left the United States on May 12, 2000, with an advance parole, which she subsequently lost. According to counsel, the applicant sought assistance at the U.S. Embassy in Honduras, but she was "turned away after her work authorization card was destroyed." Counsel added that the applicant then entered the United States, illegally, on or around August 4, 2000. Counsel contends that the applicant's absence was only for 81 days and should be considered innocent, casual and brief and that her TPS application should be approved for humanitarian reasons.

In her statement, the applicant claims that she entered the United States on or about September 1997. The applicant stated that she was granted advance parole in order to visit her mother in Honduras who was ill. According to the applicant, she lost her travel document and was unable to obtain any help from the United States Embassy, and subsequently reentered the United States on or about August 4, 2000. In reviewing the evidence, the record reflects that the Form I-797C dated November 9, 1999, is the earliest date presented as evidence of the applicant's presence in the United States during the requisite period. Therefore, the evidence presented is of little or no probative value.

Counsel's statements have been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above. Furthermore, affidavits without supporting evidence are not, by themselves, persuasive evidence of residence or physical presence.

It is noted that the applicant's claim regarding her absence from the United States is plausible; however, the record does not contain sufficient evidence to establish that the applicant has met the requisite continuous residence and continuous physical presence requirements for TPS.

The applicant has not submitted sufficient evidence to establish that she has met the criteria for continuous physical presence described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to withdraw the applicant's temporary protected status will be affirmed.

Beyond the director's decision, it is also noted that the record contains two Form I-205, Warrants of Removal and Deportation dated March 22, 2001 and October 29, 2002 under file number [REDACTED]. It does not appear that the warrants were executed. However, it presents the possibility that the applicant was deported and returned to the United States on two separate occasions, without permission contrary to section 212(a)(9) of the Immigration and Nationality Act. Consequently, the applicant may not have maintained continuous residence or physical presence in the United States during the qualifying period pursuant to 8 C.F.R. §§ 244.2(b) and (c).

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.