



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

M₁

[REDACTED]

FILE: [REDACTED]
[EAC 09 085 85332]

Office: VERMONT SERVICE CENTER

FEB 02 2010
Date: r

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

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office 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 director determined that the applicant failed to establish she had: 1) continuously resided in the United States since December 30, 1998; and 2) been continuously physically present in the United States since January 5, 1999. The director, therefore, denied the application.

On appeal, counsel for the applicant states that she previously submitted documentation confirming her physical presence and residence in the United States since December 30, 1998. Counsel also states that he would submit a brief and/or evidence within 30 days. To date, there has been no further correspondence from the applicant or counsel. Therefore, the record must be considered complete.

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.

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, 2010, 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 United States Citizenship and Immigration Services (USCIS). 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 shows that the applicant filed this TPS application on December 12, 2008. The applicant filed her initial TPS application on September 17, 2007. The Director, Vermont Service Center, denied this application on June 25, 2008 because the applicant failed to establish continuous residence and continuous physical presence in the United States.

In support of this TPS application, the applicant submitted:

1. Copies of a birth certificate with English translation; a Passport issued in Honduras on July 31, 2007; school records indicating the applicant was enrolled in school from April 6, 1999 through May 20, 2007; a birth

certificate for the applicant's son who was born on July 4, 2007; 2006 tax documents; and an undated resume.

2. Copies of certificates dated May 2004, January 21, 2005, May 2005, June 8, 2005, January 20, 2006, May 19, 2006; a report from MGH CHELSEA Health Care Center dated August 26, 2004; a MGH Immunization Record indicating shots received on January 26, 1996, January 28, 1999, April 5, 1999, September 10, 1999, August 22, 2003, and August 26, 2004; Authorization for Release of Protected or Privileged Health Information dated May 4, 2007; an invoice dated May 18, 2007; medical records dated from January 25, 1999, to February 9, 2007.

On June 25, 2008, the applicant was informed that he failed to establish continuous residence and continuous physical presence in the United States. The director determined that the applicant failed to provide any new and compelling evidence to overcome the reasons for the denial.

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 denied the application.

On appeal, counsel for the applicant states that she previously submitted documentation confirming her physical presence and residence in the United States since December 30, 1998. Counsel also states that he would submit a brief and/or evidence within 30 days. To date, there has been no further correspondence from the applicant or counsel. Therefore, the record must be considered complete.

All of the evidence submitted by the applicant is dated subsequent to the requisite dates to establish continuous residence and continuous physical presence in the United States. Therefore, this evidence is of little or no probative value. It is noted that the applicant provided a photocopy of the first page of her passport in an attempt to establish her nationality and her identification. However, the passport was signed by the applicant and issued in Honduras on July 31, 2007. This is further evidence that the applicant has not met the continuous residence and physical presence criteria described in 8 C.F.R. § 244.2(b) and (c), thereby precluding a finding that the applicant was in the United States during the operable timeframe.

The applicant has not submitted any evidence to establish her qualifying continuous residence or continuous physical presence in the United States during the period from December 30, 1998 and January 30, 1998. She has, therefore, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

It is also noted that the applicant filed the current application and indicated that she was eligible for late initial registration based on her previous TPS application. However, change of status, by regulation, is limited to a change of one nonimmigrant classification to another. TPS does not render nonimmigrant status to the applicant. Consequently, it does not qualify as a change of status application

and does not render the applicant eligible for subsequent late registration. The provisions for late registration were detailed in 8 C.F.R. § 244.2(f)(2). Consequently, the applicant has provided insufficient evidence to establish her eligibility for late registration. Therefore, the application must be denied on this basis as well.

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.