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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: **FEB 24 2010**
[EAC 09 055 75463]

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


for Perry Rhew
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 claims to be a citizen of Honduras who is applying for 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 in the United States during the requisite periods.

On appeal, counsel asserts that the applicant arrived in the United States at the age of three, and the applicant's mother stayed at home to care for her. Counsel asserts that the applicant's parents did not enroll the applicant into school before the first grade because they did not think it was required. Counsel asserts that at the time the applicant's father filed his TPS application, he did not speak English and trusted the person who prepared the application for him.

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 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.

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.

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 July 5, 2010, 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 record reflects that the applicant filed this application with U.S. Citizenship and Immigration Services (USCIS) on November 20, 2008, after the initial registration period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

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 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).

On April 3, 2009, the applicant was requested to submit evidence establishing her qualifying continuous residence in the United States. The applicant, in response, provided:

- A student information sheet from Brockett Elementary in DeKalb County (Georgia) School System, reflecting the applicant's enrollment commencing March 11, 2002.
- An affidavit notarized October 22, 2009, from [REDACTED]¹ who indicated that she has known the applicant for ten years, and attested to the applicant's moral character.
- A notarized affidavit from [REDACTED] who indicated that he has known the applicant since November 1998, and attested to the applicant's moral character.
- A notarized affidavit from her mother, who indicated that the applicant entered the United States with her, at the age of three, on April 20, 1998. The mother indicated the applicant did not visit a doctor because she did not have medical insurance and was in an illegal status. The mother indicated due to the applicant's illegal status and "since in Honduras, children start school when they are seven years old, I did not know that she was supposed to start school before."

The applicant also submitted several affidavits from affiants attesting to her mother's residence and physical presence in the United States.

The director, in denying the application, noted that the affidavits attesting to the residence of the applicant's mother were not sufficient to establish her residence, and the school documentation only served to establish the applicant's residence in the United States subsequent to the required period. The director also noted that the TPS applications filed by the applicant's father on June 18, 1999, May 19, 2000, and June 4, 2001, indicated she was residing in her native country, Honduras, during the period in question. The director determined that the applicant had failed to establish her qualifying continuous residence in the United States during the requisite periods, and had failed to establish she was eligible for late registration. The director denied the application on June 25, 2009.

On appeal, the applicant submits affidavits from her parents along with affidavits from affiants attesting to the applicant's residence in the United States since 1998. The applicant's mother asserted, in pertinent part, "I can assure you that my daughter was in the United States and the problem we had is that we did not speak English at that time and my husband signed the applications without realizing that the applicant indicated that [the applicant] was in Honduras."

The applicant's father, asserted, in pertinent part:

I can assure you that my daughter was in the united states. I assure you that I signed the applications without realizing that the application indicated that [the applicant] was in

¹ Although the affidavit was notarized, it did not contain the affiant's signature.

Honduras. My wife would never have left Honduras and leave our little daughter alone for any reason especially when she was only 3 years old and I was already in the united states.

The applicant's father, however, in affixing his signature on part five of his TPS applications, certified that the information he provided was *true* and *correct*.

Furthermore, the affidavits submitted from the affiants raise questions to their credibility as the registration form from the DeKalb County (Georgia) School System, which was signed by the applicant's mother on August 7, 2002, indicates that the applicant's entry date into the United States was February 15, 2002.

Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The applicant has not submitted any credible evidence to establish her qualifying continuous residence or continuous physical presence in the United States during the eligibility period. The applicant 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 TPS will be affirmed.

The applicant claims eligibility as a late registrant because she is a child of an alien currently eligible to be a TPS registrant. While regulations may allow children of TPS beneficiaries to file their applications after the initial registration period had closed, these regulations do not relax the requirements for eligibility for TPS. The applicant must meet all other requirements, namely continuous residence since December 30, 1998, and continuous physical presence in the United States since January 5, 1999 as required in 8 C.F.R. § 244.2((b) and (c). The applicant has not credibly established that she had met these criteria. Consequently, the director's conclusion that the applicant had failed to establish her eligibility for late registration will be affirmed.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); see also, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. See, e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Beyond the decision of the director, the applicant claims to be a citizen of Honduras, but has not submitted any documentation to establish her identity and nationality such as a passport, birth certificate accompanied by photo identification or any national identity document from her country of origin containing her photograph and/or fingerprint. 8 C.F.R. § 244.9(a)(1). Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165

(Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The applicant has, therefore, failed to establish her identity and nationality as required in 8 C.F.R. § 244.9(a)(1). Accordingly, the application must be denied for this reason 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 TPS 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.