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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER

Date:
MAY 06 2010

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254

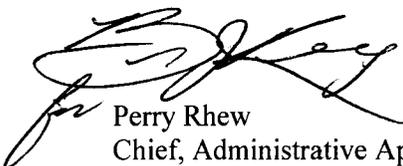
ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. 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).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office 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 withdrew TPS because the applicant failed to establish that she had continuously resided in the United States since December 30, 1998, and had been continuously physically present in the United States since January 5, 1999. The director also found the applicant inadmissible under section 212(a)(6)(C) (i) of the Act.

On appeal, counsel asserts that the applicant did not misrepresent the fact that she entered the United States on February 25, 1992, "because the Applicant first entered in February of 1992 and then later left and returned to the U.S. on February 2, 1999." Counsel asserts that the applicant had a son who was born in Miami, Florida in 1995. Counsel asserts that the applicant was present and resided in the United States prior to her February 2, 1999 re-entry.

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 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.

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 in the United States 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 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 U.S. 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 FBI report dated July 13, 2006, reveals that on December 22, 2003, the applicant was apprehended by USCIS and charged with improper reentry by an alien who has been previously deported and aggravated felony.

On July 24, 2006, the director issued a Notice of Intent to Withdraw TPS, which requested the applicant to submit the court dispositions for her arrest on December 22, 2003. Counsel, in response, asserted that he had made several attempts to obtain the dispositions, but had not been able to locate them. Counsel requested an extension of 90 days to submit the requested documents. However, no response was received prior to the issuance of the director's decision of March 10, 2008.

The director, in denying the application, noted that the applicant had failed to submit the requested court documentation. The director also noted that USCIS records reflect that the applicant was apprehended on February 2, 1999, by the United States Border Patrol near Brownsville, Texas. The applicant indicated at the time that she departed Honduras on January 4, 1999; arrived in Matamoros, Mexico on February 2, 1999; and entered the United States without inspection. The director determined that the applicant had misrepresented a material fact as her date of entry was on February 2, 1999 not February 25, 1992 as indicated on her TPS application. The director concluded that the applicant had failed to establish continuous residence in the United States since December 30, 1998 and continuous physical presence in the United States since January 5, 1999.

On appeal, counsel asserts that the applicant has been residing in the United States prior to her February 2, 1999 reentry.

At the time her TPS application was filed, the applicant submitted photocopies of her Florida driver license issued on September 28, 1993, and a birth certificate of her son who was born in Miami, Florida on July 19, 1995. These documents are sufficient to establish that the applicant was in the United States prior to February 2, 1999. Therefore, the director's finding that the applicant was inadmissible under 212(a)(6)(C) (i) of the Act will be withdrawn.

Nevertheless, there is not sufficient evidence in the record to establish that the applicant had continuously resided in the United States since December 30, 1998, and had been continuously physically present since January 5, 1999. Except for the driver license and her son's birth certificate, the applicant provided no other evidence to substantiate her residence and physical presence in the United States during the requisite periods. The applicant's passport, which contains her fingerprint, was issued to her in her native country, Honduras, on November 18, 1998, and counsel indicated that the applicant had departed the United States and did not reenter until February 2, 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). Consequently, the director's decision to withdraw TPS will be affirmed.

As previously noted, the applicant was apprehended on February 2, 1999. On October 20, 1999, a removal hearing was held and the alien was ordered removed *in absentia* from the United States. On December 22, 2003, the applicant was apprehended near Harlingen, Texas. Because the applicant had filed a TPS application, the applicant was released under an Order of Supervision. See 8 C.F.R. § 241.5(a). The Order of Supervision, however, expired on January 5, 2005, and there is no evidence in the record that it was extended.

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.