



U.S. Citizenship
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Services

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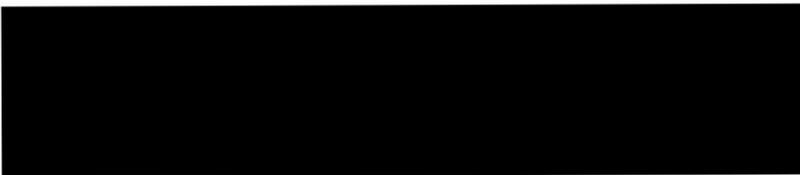


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAY 29 2007**
[WAC 05 062 70053]

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:



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.

Cindy M. Gomez
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 on appeal. The appeal will be dismissed.

The applicant is a native and 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 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.

On appeal, the applicant claims her eligibility for TPS.

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.

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 in the United States 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, 2007, 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 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).

On February 5, 2006, the applicant was requested 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 the following documentation:

1. A photocopy of the applicant's Florida Learner License issued February 6, 2005;
2. A photocopy of the applicant's high school identification card dated 2006;
3. A photocopy of the applicant's Honduran passport issued to her in Honduras on May 9, 2002;
4. Copies of the applicant's student progress and grade reports from Lake Worth High School, Florida, for the 2004 and 2005 academic school years;
5. Copies of the applicant's scholastic certificates received from Lake Worth High School and dated December of 2005, and January and February of 2005;
6. A copy of the applicant's Florida school entry health exam dated September 23, 2005;
7. A copy of a letter from [REDACTED] in which he stated that he has known the applicant since 1998; and,

8. A letter from the owner of New Creation Services, Inc. dated February 28, 2006, in which he stated that he has had the opportunity and privilege to know the applicant's mother and her two daughters for over eight years.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on April 24, 2006.

On appeal, the applicant reasserts her claim of eligibility for TPS and submits the following documentation:

9. A copy of a David's Bridal alteration fitting ticket bearing the applicant's name as customer and dated April 15, 2006;
10. A copy of a 2006 Visa Credit Card application;
11. A copy of the applicant's school records for 2006; and,
12. A copy of the applicant's marriage certificate dated May 13, 2006.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant claims that she has been present in the United States since November 5, 1998. However, the Record of Deportable/Inadmissible Alien contained in the record of proceeding shows that the applicant was apprehended by United States Border Patrol officers on February 22, 2004, after illegally entering into the country by wading the Rio Grande River at or near Hildago, Texas. At that time, the applicant stated that she had left Honduras on or about February 16, 2004, entered Guatemala illegally, and subsequently entered Tamaulipas, Mexico, illegally before wading the Rio Grande River. The applicant also stated that she came to the United States to live with her mother and attend school.

It is noted that the applicant submitted a statement to Immigration and Naturalization Services that was attached to her Application for Asylum and for Withholding of Removal, dated August 2, 2005, in which she stated that she came to the United States in November of 1998, and returned to Honduras after staying in the country for "a couple of months." The applicant also stated that upon her return to Honduras she attended a private school and became a member of the Cuadro de Honor. The applicant further stated that as a result of her cousin being raped in Honduras in January of 2004, she decided to leave that country and relocate to the United States for her own safety. It is further noted that the applicant was issued her Honduran passport in Honduras on May 9, 2002.

The applicant submitted copies of generic retail receipts that cannot be used to establish her presence in the United States during the requisite time periods. There has been no corroborative evidence submitted to substantiate the statements made by the owner of New Creation Services or [REDACTED]. All other evidence submitted by the applicant is dated subsequent to the time periods at issue and are insufficient to establish the applicant's residence and presence in this country since December 30, 1998.

The applicant has failed to establish that she has met the continuous residence and continuous physical presence 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.

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. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.