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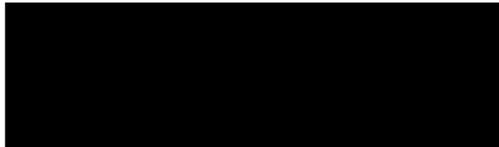
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



[EAC 07 048 70932]

Office: VERMONT SERVICE CENTER

OCT 02 2007
Date:

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: SELF-REPRESENTED

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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC), 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 applicant filed an initial Form I-821, Application for Temporary Protected Status, under receipt number WAC 05 117 72671 after the initial registration period had closed. The Director, California Service Center, denied that application on May 30, 2006, after determining that the applicant had failed to respond to a Notice of Intent to Deny.

The applicant filed the current Form I-821 on November 17, 2007. The director denied the application because the applicant failed to establish she was eligible for late initial registration. The director also found that the applicant had not established that she had continuously resided in the United States since December 30, 1998 and had been continuously physically present in this country since January 5, 1999.

On appeal, the applicant states that she first arrived in the United States on July 26, 1998 and that she first applied for TPS on July 22, 2003. She further states that her grandfather passed away and that she traveled to Honduras at the end of June 2004 and stayed there for two weeks. She argues that her continuous residence and continuous physical presence in this country should not be considered interrupted because of her short visit to Honduras because from the end of June 2004 until she was stopped by the Border Patrol while returning on July 8, 2004.

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 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.
- (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 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 since January 5, 1999. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record shows that the applicant filed her applications with Citizenship and Immigration Services on January 25, 2005 and on November 17, 2007. The record reflects that the applicant attempted to file another late initial application in 2003, but that Form I-821 was rejected because the fee was not attached.

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

On appeal, the applicant did not submit evidence excusing her failure to file her applications for TPS within the initial registration period. The applicant has not submitted any evidence to establish that she has met any of the criteria for late registration described in the regulations at 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS is affirmed.

The second issue in this proceeding is whether the applicant has established her continuous residence in the United States since December 30, 1998, and her continuous physical presence in this country since January 5, 1999.

The phrase 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.

On appeal, the applicant acknowledges that she left the United States in 2004 and returned to Honduras. The record reflects that she entered Honduras on May 24, 2004, and not in late June as she stated in her appeal. The record contains a Form I-213, Record of Deportable/Inadmissible Alien, dated July 8, 2004, indicating that the United States Border Patrol apprehended the applicant after she illegally entered the United States by wading across the Rio Grande River on that day. In this case, the applicant's absence from the United States for more than six weeks for a purpose that she states took two weeks to accomplish does not meet the specified criteria for a brief casual and innocent absence as defined by 8 C.F.R. § 244.1 (*supra*). Additionally, there is no evidence in the record to indicate that she sought permission from Citizenship and Immigration Services before she made the trip by filing a Form I-512, Authorization for Parole of an Alien into the United States. Therefore, she cannot satisfy the continuous residence and continuous physical requirements described in 8 C.F.R. §§ 244.2(b) and (c) which require her continuous residence in the United States since December 30, 1998 and her continuous physical presence in this country since January 5, 1999. Consequently, the director's decision to deny the application for TPS is affirmed for these reasons.

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 cited 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.