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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: TEXAS SERVICE CENTER

Date:

JUL 24 2007

[SRC 04 231 53011]

IN RE:

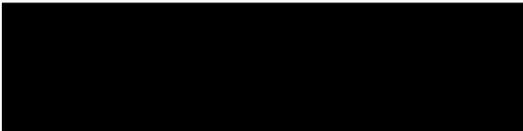
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) 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 denied the application because the applicant failed to establish her eligibility for late initial registration.

On appeal, the applicant, through counsel, submits a statement and additional evidence.

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.

- (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.

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.

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. 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 January 5, 2009, upon the applicant's re-registration during the requisite period.

The initial registration period for Hondurans was from January 5, 1999 to August 20, 1999. The record shows that the applicant filed this application on August 27, 2004.

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).

The record of proceeding confirms that the applicant filed this application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from January 5, 1999 through August 20, 1999, he or she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

The director determined that the applicant had failed to establish her eligibility for late initial registration and denied the application on September 22, 2004. The director noted that the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status, had been denied on April 13, 2001, and that she had failed to apply for TPS within 60 days of the termination of the application that rendered her eligible for late initial registration.

On appeal, the applicant states that it was not her fault that she failed to register timely, and that Service error prevented her from registering for TPS on time. She states that she was never aware that her Form I-485 had been denied until recently, after her attorney filed a Freedom of Information Act (FOIA) request and after her employment authorization was denied. She states that the letter denying her Permanent Resident status was mailed to an incorrect apartment number, which prevented her from being aware of the denial and the need to

apply earlier for TPS under the late registration provisions. In support of the appeal, the applicant submits: an interview appointment notice dated May 24, 1999, bearing a handwritten note regarding a new apartment number [#100]; and, a Notice of Denial of Application for Permanent Residence from the District Director, Houston, Texas, dated April 13, 2001.

The record reveals that the applicant was the beneficiary of a Form I-130, Petition for Alien Relative, filed by her husband, a United States Citizen, on May 31, 1995. The Form I-130 was approved on September 20, 1995, and was subsequently revoked on April 13, 2001. In addition, the Form I-485, Application to Register Permanent Residence or Adjust Status, was filed on the applicant's behalf on October 31, 1996. The application for change of status was pending during the initial registration period and, therefore, the applicant met one of the criteria for eligibility for late initial registration under the provisions of 8 C.F.R. § 244.2(f)(2)(ii).

However, the record reflects that the Form I-485, was also denied on April 13, 2001. As noted above, if the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for late initial registration. 8 C.F.R. § 244.2(g). The Form I-485 was denied on April 13, 2001, but the applicant did not file her application for TPS until August 27, 2004, well beyond the 60 days as required under 8 C.F.R. § 244.2(g). The handwritten change of apartment number on the 1999 interview notice is not conclusive evidence that the denial letter had been improperly sent to the applicant. The 1999 notice bears no receipt stamp of having been submitted to CIS, and no Form AR-11, Change of Address Card, corroborating this change of address was received. The record also contains another change of address letter dated by the applicant on October 8, 2002, and stamped as received on October 21, 2002. This letter reflects as the new apartment that which was listed by the applicant on the 1999 notice. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

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.