



U.S. Citizenship
and Immigration
Services

M

[Redacted]

FILE: [Redacted]

Office: NEBRASKA SERVICE CENTER

Date: AUG 15 2004

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.

for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska 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 seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1254.

The director determined that the applicant failed to establish she: 1) had continuously resided in the United States since December 30, 1998; 2) had been continuously physically present in the United States since January 5, 1999; and 3) was eligible for late registration. The director, therefore, denied the application.

On appeal, counsel asserts that the applicant submitted sufficient proof of her entry into the United States prior to December 1998, and her continuous physical presence since December 1998.

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, 2005, 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 her application on June 30, 2003.

The record reveals that the applicant filed her first application for TPS on July 7, 1999. The director denied that application on April 6, 2000, after determining that the applicant had failed to establish she and [REDACTED] are one and the same person; therefore, evidence submitted under the name of [REDACTED] was not acceptable to establish the applicant's continuous residence and continuous physical presence during the qualifying period. The applicant filed a second TPS application on July 10, 2002. The director denied that application on April 1, 2003, after determining that the applicant failed to establish that she was eligible for late registration.

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 first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding confirms that the applicant filed her application on June 30, 2003, 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, 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. *See* 8 C.F.R. § 244.2(g).

On August 2, 2003, the applicant was provided the opportunity to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing her date of entry and continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States from January 5, 1999 to the date of filing the application. In response, the applicant submitted evidence in an attempt to establish her continuous residence and continuous physical presence during the qualifying period. The applicant did not present any evidence of his eligibility for late registration. Therefore, the director denied the application.

On appeal, counsel asserts that the applicant has provided sufficient evidence of her continuous physical presence since December 1998. The applicant also provides additional evidence in an attempt to establish her continuous residence and physical presence in the United States during the qualifying period. However, this does not mitigate the applicant's failure to file her TPS application within the initial registration period. The applicant also provided a copy of her marriage certificate, which indicates she was married on July 26, 2000. Although counsel claims that the applicant is married to a TPS-eligible applicant, the applicant's marriage must have been valid at the time of the initial registration period. However, the applicant's marriage took place almost nine months subsequent to the end of the registration period. The applicant has failed to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant failed to establish her eligibility for late registration will be 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 the United States since January 5, 1999.

As stated above, the applicant was requested on August 2, 2003, to submit evidence establishing her qualifying residence and physical presence in the United States. In response, counsel submitted several documents listed in his letter of response and reviewed by the director. The director, however, noted that no evidence was furnished to prove continuous residence and continuous physical presence from December 1998, specifically under the name of the applicant.

The director concluded that the applicant had failed to establish her qualifying residence and physical presence in the United States during the requisite periods and denied the application on September 30, 2003.

On appeal, counsel claims that the applicant established her continuous residence and physical presence during the qualifying period. According to counsel, the applicant submitted proof that she gave birth to a son on December 26, 1991, and gave birth to a daughter on September 29, 1995. Counsel also claims that the fact that the applicant had two previous denied TPS applications is not determinative of the current application. The applicant also furnished a letter from [REDACTED], Income Maintenance Supervisor of the Duplin County Department of Social Services. According to [REDACTED] the applicant's children have received Medicaid through Duplin Country Social Services from October 1, 1998 until October 31, 1999. However, the letter does not establish the applicant's continuous residence and continuous physical presence in the United States during the qualifying period.

The applicant has not submitted sufficient evidence to establish her qualifying residence or physical presence in the United States during the period from December 30, 1998 and January 30, 1999, respectively. She 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 temporary protected status on this ground will also be affirmed.

It is noted that the applicant, in an attempt to establish continuous residence and continuous physical presence in the United States, furnished a fraudulent Resident Alien Card (A92 311 649) in which the name of [REDACTED] and the applicant's photograph were substituted. The record reflects that the applicant utilized this fraudulent card to obtain employment. The fraudulent card is now furnished to CIS in an effort to facilitate the applicant's eligibility for TPS. Pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(C)(i), any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible. The applicant, in this case, is seeking to procure TPS benefits under section 2244 of the Act. The applicant, therefore, appears inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act.

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.