



U.S. Citizenship  
and Immigration  
Services

MI

[Redacted]

FILE: [Redacted]

Office: TEXAS SERVICE CENTER Date: 11/16/2011

IN RE: Applicant: [Redacted]

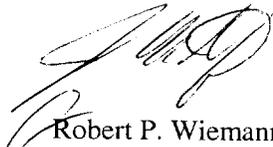
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

Information data deleted in  
accordance with the provisions of  
Executive Order 13526

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**DISCUSSION:** The application was denied by the Director, Texas 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 was eligible for late registration.

On appeal, counsel for the applicant stated that the applicant qualifies for late initial registration pursuant to 8 C.F.R. § 244.2(f)(2)(i), as she was in deportation proceedings during the initial registration period.

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.

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 reveals that the applicant filed her application with Citizenship and Immigration Services (CIS), on June 16, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

The burden of proof is upon the applicant to establish that she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

On August 5, 2003, the applicant was requested 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 photographs, and evidence establishing her nationality, and qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation relating to her nationality and her residence and physical presence in the United States. In support of her eligibility to apply for late registration, the applicant also provided: an affidavit relating to her Form I-601, Application for Waiver of Ground of Excludability; a Notice of Hearing in Removal Proceedings, Harlingen, Texas, dated November 4, 1998; a Form I-220A, Order of Release on Recognizance, dated December 1, 1998; a Warrant for Arrest of Alien, dated October 13, 1998; and, a Form I-862, Notice to Appear, indicating that the applicant had been placed in deportation proceedings on October 13, 1998.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on October 1, 2003.

On appeal, counsel for the applicant asserts that the applicant was in deportation proceedings during the initial registration period and that she qualifies for late registration pursuant to the regulation at 8 C.F.R. § 244.2(f)(2)(i).

It is noted that the record contains documentation of the procedural history of the applicant's hearing in deportation proceedings. The record includes the Order of the Immigration Judge dated November 30, 1998, indicating that the judge ordered that the applicant be removed from the United States to Honduras pursuant to the provisions of law at Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act). A Form EOIR-26, Notice of Appeal to the Board of Immigration Appeals [BIA] of Decision of Immigration Judge, was timely filed on December 30, 1998. On April 2, 1999, former counsel filed with the BIA a Motion for Administrative Closure in Order to Apply for Temporary Protected Status. In a document dated June 29, 1999, the BIA ordered that the proceedings before the Board be administratively closed because the applicant was eligible to apply for

TPS. It is noted that the order of the BIA was stamped as received by District Counsel, Harlingen, Texas, on February 7, 2000.

Counsel's assertion is not persuasive that the applicant is eligible for late registration pursuant to the regulation at 8 C.F.R. § 244.2(f)(2)(i). The administrative closure of a pending appeal before the BIA does not equate to the applicant having been granted voluntary departure status or any relief from removal.

While the applicant's pending appeal rendered her eligible for late registration under the provisions of 8 C.F.R. § 244.2(f)(2)(ii), CIS regulations also require a late registration to be filed within a 60-day period immediately following the expiration or termination of conditions that made the applicant eligible for late registration. 8 C.F.R. § 244.2(g). In this case, since the applicant's pending appeal was administratively closed on June 29, 1999, her 60-day period for late registration actually expired on August 29, 1999, or nine days after the initial registration period closed. The applicant filed her application with the director on June 16, 2003. Even if the applicant is considered as not having received the BIA order until February 7, 2000, the date the order was received by District Counsel, Harlingen, Texas, the application for TPS in that event would still have been filed more than three years after the termination of the condition, a pending appeal for relief from removal, made the applicant eligible for late registration.

The applicant did not file her application during the initial registration period or during the allotted 60-day late registration period described in 8 C.F.R. § 244.2(g). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

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.