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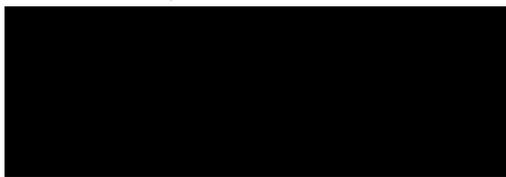
U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**



FILE:



Office: California Service Center

Date: **FEB 06 2004**

IN RE:

Applicant:



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

ON BEHALF OF PETITIONER: Self-represented

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 N. Gomez for

Robert P. Wiemann, Director
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 Mexico who indicated on her Form I-821, Application for Temporary Protected Status, that she entered the United States in November 1998, on a B-2 visitor visa. It is noted that in a re-registration application, the applicant also stated that her last entry was in 2001, and that she "goes in and out" as a B-2 non-immigrant visitor. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254, because the applicant failed to establish she was a national of a designated country.

On appeal, the applicant states that she wanted to file as a "following to join" because she was living with her husband, who is apparently Honduran, at the time he filed, but they lacked the funds for both to apply. The applicant admits that she is a citizen of Mexico and asks that her denial be reconsidered. According to the applicant, she cannot reside in one country when her husband is in another, and that this is the only country where they can "reside together as a family."

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 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 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 March 31, 2003, the applicant was informed that because she is a native of Mexico she is ineligible for TPS. On appeal, the applicant claims that she was going to apply for "following to join." However, there is no such provision in the regulations for obtaining this status under TPS. The applicant provided a copy of her marriage license, which was issued on January 25, 2001. Therefore, even if the applicant's spouse was granted TPS, the marital relationship did not exist during the initial registration period for TPS. Consequently, the applicant would not be eligible as a spousal dependent.

There is currently no provision granting TPS to nationals of Mexico. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, the applicant also appears to not have satisfied the continuous physical presence and continuous residence requirements under TPS.

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.