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U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

JUN 29 2004

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 office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont 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 denied the application for TPS because he determined that the evidence furnished by the applicant did not overcome the grounds of denial as stated in the December 23, 2002 notice of intent to deny the application. The applicant had been requested to submit: (1) evidence that she is a citizen of Honduras; (2) evidence to establish that she has continuously resided in the United States since December 30, 1998; (3) evidence to establish that she has been continuously physically present in the United States since January 5, 1999; and (4) evidence to establish that she was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999.

On appeal, the applicant states that she has followed all of the rules and regulations for TPS, and she believes that she should be granted such status. The applicant submits additional evidence of her residence in the United States.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 condition 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 in the United States 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 time period.

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).

The first issue in this proceeding is whether the applicant has established that she is a national of a foreign state designated by the Attorney General and eligible for the granting of Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2(a), provide that an applicant is eligible for temporary protected status only if such alien establishes that he or she:

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;....

As stated above, the applicant was requested on December 23, 2002, to submit evidence to show that she is a citizen or national of Honduras. In response, the applicant submitted the following evidence:

- 1.) a copy of her birth certificate which shows that she was born in Honduras on September 22, 1983; and,
- 2.) a copy of the biographic pages from her Honduran passport

Upon review of the documentation submitted in response to the notice of intent to deny, and on appeal, it is concluded that the applicant has established that she is a national or citizen of Honduras. Therefore, this portion of the director's decision has been overcome.

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

The record of proceeding confirms that the applicant filed her application for TPS on July 1, 2002, after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or 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 he or 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).

On December 23, 2002, 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 evidence of her nationality, and evidence establishing her qualifying residence and 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.

The director determined that the applicant had failed to overcome the grounds of denial and denied the application on April 30, 2003. On appeal, the applicant submits evidence in an attempt to establish her nationality and her qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file her application 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 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 third 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 December 23, 2002, to submit evidence establishing her qualifying residence and physical presence in the United States. In response, the applicant submitted the following documentation as evidence of her residence in the United States:

- 3.) a copy of a January 7, 2003 affidavit from her former employer who stated the applicant was employed at M&G Grocery from December 1998 until October 1999;
- 4.) a copy of a January 7, 2003 affidavit from the applicant's former landlord, who stated that the applicant rented an apartment at Plainfield, New Jersey, from December 1998 to December 1999; and,
- 5.) a copy of a December 15, 1998 lease agreement pertaining to the premises listed in Item No. 4, above.

On April 30, 2003, the director concluded that the applicant had failed to overcome the grounds of denial and denied the application. On appeal, the applicant states that she has followed all of the rules and regulations and she has lived an honest life in the United States. She asserts that she qualifies for TPS and that she should be granted such status. The applicant submits copies of the same evidence she had previously submitted, as well as the following new evidence:

- 6.) a second affidavit, dated June 27, 2002, from [REDACTED] the applicant's former landlord, who stated that the applicant rented an apartment at [REDACTED] Plainfield, New Jersey, from December 1998 to December 1999; and,
- 7.) an affidavit from [REDACTED] the owner of I ♥ SORPRESA, who states the applicant has been his client since May 5, 1998.

The applicant claims to have lived in the United States since October 5, 1998. It is reasonable to expect that she would have some other type of contemporaneous evidence to support her claim; however, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that she satisfies the continuous residence and physical presence requirements described in 8 C.F.R §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed on this basis as well.

While the applicant has established that she is a national of Honduras, she has not established that she is eligible for late registration or that she has met the continuous residence and physical presence criteria for TPS. Therefore, the appeal is dismissed.

The burden of proof is upon the applicant to establish 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.