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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[LIN 02 233 50180]

Office: NEBRASKA SERVICE CENTER

Date: MAY 11 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: 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.

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 indicated on her application that she entered the United States in May 1997, without a lawful admission or parole. 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 eligible for late registration, and that she had been physically present in the United States since January 5, 1999.

On appeal, the applicant states that she has resided in the United States since January 5, 1999. She claims that she has previously submitted proof of her residence in the United States, paid an application fee, and was fingerprinted. The applicant states that she has never received any information about her application and requests that she be informed of the status of her case.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant did file an initial application for TPS on May 21, 1999. That application was denied on November 16, 2000 due to abandonment. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed a subsequent Form I-821 on July 22, 2002. Here, the director found that the application was filed outside of the initial registration period and the applicant had failed to submit any evidence to establish that she qualified for late registration. Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial. While the director found the applicant ineligible for TPS because she had failed to establish eligibility for late registration, the director's decision did not specifically explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on May 21, 1999. That initial application resulted in a denial from the director. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed a subsequent Form I-821 on July 22, 2002. As the initial application was denied on November 16, 2000, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

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 term *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.

The term *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.

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.

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).

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 the Bureau. 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 November 26, 2002, the applicant was provided the opportunity to submit: (1) evidence to show that she has continuously resided in the United States since December 30, 1998; (2) evidence to show that she has been continuously physically present in the United States since January 5, 1999; and (3) evidence to establish that she was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. The applicant also was requested to submit a photo identification document and a copy of her passport or birth certificate with English translation. The applicant, in response, provided: copies of her birth certificate and her passport; a photo identity document; moneygram receipts dated August 10, 1998, November 26, 1998, August 5, 1999, and January 2, 2000; a utility bill dated October 17, 1998; and a COMCAST statement for the period from November 6, 1998 to December 5, 1998. In addition, on appeal, the applicant submits: three U.S. Postal Service money order receipts, each dated July 18, 2002; a pay statement for the period October 24, 1999 to November 6, 1999; a COMCAST statement dated December 7, 1998 and a COMCAST service worksheet for the period July 27, 1998 to October 31, 1998; and a resume on the stationery of America's Talent Bank, which states the applicant worked at Shenandoah Country Club from March 1997 to November 2000.

The applicant has not submitted any evidence for the period from January 1999 to July 1999; from February 2000 to December 2000; and for the year 2001. Therefore, the applicant has not established that she has met the criteria for continuous physical presence described in 8 C.F.R. § 244.2(b) and (c). In addition, she has not presented evidence to establish eligibility for late registration. Consequently, the director's decision to deny the application 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.