



U.S. Citizenship
and Immigration
Services

W

[Redacted]

FILE:

[Redacted]

Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

Applicant:

[Redacted]

7/21/14

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.

Cecilia M. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

U.S. DEPARTMENT OF HOMELAND SECURITY
U.S. CITIZENSHIP AND IMMIGRATION SERVICES
OFFICE OF PERSONAL PRIVACY

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) 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 submit evidence to establish that she was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. The director, therefore, denied the application.

On appeal, counsel states the applicant has resided in the United States since 1985 and that she has previously demonstrated eligibility for temporary protected status. He also states that at the time of her application, she was married to a TPS registrant, that she had previously been granted voluntary departure, and, that she was, therefore, eligible for late registration.

The record reveals that the applicant did file an initial application for TPS on June 28, 1999. That application was denied on February 9, 2000 due to abandonment because the director determined that the applicant had failed to respond to a request for additional evidence issued on August 31, 1999. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on August 7, 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 June 28, 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 for 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 August 7, 2002. As the initial application was denied on February 7, 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.

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999.

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 record of proceeding confirms that the applicant filed her application after the initial registration period for Hondurans 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 nonimmigrant 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).

In a notice of intent to deny the application dated December 5, 2002, the applicant was requested to submit: (1) a copy of her birth certificate or passport; (2) evidence to show that she has continuously resided in the United States since December 30, 1998; (3) evidence to show that she has been continuously physically present 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. In response, the applicant submitted her birth certificate with English translation, evidence of nationality, a photo identity document, and evidence that she had met the continuous residence and physical presence criteria for TPS. However, the applicant did not furnish evidence that she was eligible for late registration. The director determined the applicant had not established her eligibility for late registration. On January 16, 2003, the director denied the application.

On appeal, counsel asserts that at the time of her application, the applicant was married to a TPS registrant and that she had previously been granted voluntary departure and, therefore, was eligible for late registration. No evidence of these assertions is included in the record. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

It is noted that the record reflects, under [REDACTED] that the applicant applied for temporary resident status as a special agricultural worker under section 210 of the Act. On March 16, 1992, the Director, Western Service Center, denied the application because he determined the applicant had failed to establish the performance of at least 90 man-days of qualifying agricultural employment at Furukawa Farms, during the eligibility period. The applicant submitted a timely appeal. On October 13, 1995, the Chief, Legalization Appeals Unit, AAO, remanded the case to the center director for further consideration and action. The remand notice was mailed to an address the applicant provided on January 18, 1995, but the notice was returned as undelivered. On May 21, 1998, the Director, California Service Center, determined the applicant had met her burden of proof by producing sufficient evidence to show the extent of her employment as a matter of just and reasonable inference. The record contains a Form I-797, Approval Notice, (Receipt Number [REDACTED]) which reflects that the applicant was granted temporary resident status on May 21, 1998. The Form I-797 notice advised the applicant of the procedure to obtain a temporary resident card, and informed her of the procedure to obtain a Form I-90A to apply for an alien registration card as a permanent resident. The May 21, 1998 notice was mailed to an updated address the applicant provided on February 12, 1996; however, it, too, was returned as undelivered. Thus, although the applicant is ineligible for temporary protected status, it appears that she may have other remedies available to her, in that she may already have been granted temporary resident status, and may be eligible for other benefits (adjustment to lawful permanent resident).

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act. 8 U.S.C. § 1361.

ORDER: The appeal is dismissed.