



U.S. Citizenship
and Immigration
Services

10/11



FILE: [Redacted]

Office: TEXAS SERVICE CENTER

Date:

OCT 26 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.

Cindy M. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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DISCUSSION: The application was denied by the Director, Texas Service Center on October 28, 2002. The applicant filed a motion to reopen on June 26, 2003, that was dismissed by the service center director on July 11, 2003. On August 1, 2003, the applicant filed another motion to reopen that was dismissed by the service center director on August 19, 2003. The matter is now before the Administrative Appeals Office (AAO) on appeal of the director's dismissal of the motion to reopen and denial of the TPS application. The appeal will be dismissed, and the prior decision of the director is affirmed.

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's decision of denial dated October 28, 2002, stated that the applicant had failed to respond to a request for additional evidence to establish her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). Because the applicant failed to respond, the director determined that she had abandoned her application. The director advised the applicant that a denial due to abandonment may not be appealed, but the applicant could file a motion to reopen pursuant to the regulations at 8 C.F.R. § 103.5.

On June 26, 2003, the applicant filed a motion to reopen, in which she stated that she would like her case to be reopened and would like to be given: "the opportunity to be legal in this country in which [with] a lot of difficulty I have lived here without having a better opportunity in employment and also to pay my taxes." The applicant states she has been living in the United States since 1998. She also states that due to fear of deportation or not getting an extension she did not apply [earlier].

On July 11, 2003, the director addressed the applicant's motion to reopen, finding that the Form I-290B was submitted more than 30 days after the service of the decision it sought to reopen, and was therefore, rejected as an appeal. The director further found that the requirements of a motion to reopen as provided at 8 C.F.R. § 103.5(a)(2) or (3), had not been met and, therefore, the appeal could not be treated as a motion. Although not quoted at length by the director, it is noted that the provisions of 8 C.F.R. § 103.5(a)(2)(i) through (iii) specifically pertain to motions to reopen an application or petition denied due to abandonment. The decision also states that: "This decision [October 28, 2002] was dismissed by the Office of Administrative Appeals on January 30, 2003." There is no evidence in the record of this AAO decision.

Subsequently, the applicant filed a motion to reopen on August 1, 2003. The applicant stated that she applied late because she was afraid of being deported and lacked information. The applicant requested another chance for the welfare of her baby due to be born in October of that year. The applicant did not submit additional evidence in support of her claim.

On August 19, 2003, the director addressed the applicant's second motion to reopen. The director reiterated the basis for the denial of the TPS application due to failure to establish eligibility for late registration, and noted the regulatory requirements for motions to reopen. The director concluded that the entire record had been reviewed and that the applicant had not overcome the basis for the original denial of her TPS application. Therefore, this second motion to reopen was dismissed.

The applicant submits an appeal to the director's decision dismissing her motion to reopen and denying her TPS application. In the instant appeal, the applicant states that she has "truly been living in this country since 1998," and has evidence to prove that. She asks again for "the opportunity to continue being legal in this country in which with a lot of difficulty I have lived here without having the opportunity of being employed and also given

the chance to pay my taxes." On appeal the applicant does not submit any additional evidence in support of her claim.

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 initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on June 26, 2002.

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 9, 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 record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned her application and issued a Notice of Decision on October 28, 2002. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days.

On prior motion, the applicant submitted evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file her application for Temporary Protected Status 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 decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish her qualifying continuous residence or continuous physical presence during the requisite time periods. Therefore, the application must also be denied for these reasons.

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, and the prior decisions of the director are affirmed.