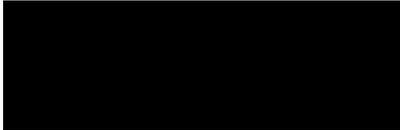


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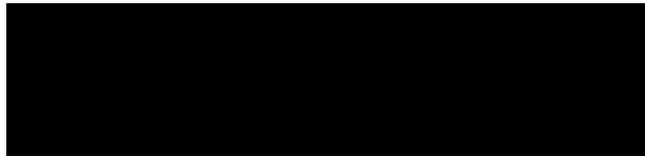
Office: NEBRASKA SERVICE CENTER

Date: **AUG 29 2005**

[LIN 02 216 51963]

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.

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 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 because the applicant failed to establish she was eligible for late registration. The director also found that the applicant had failed to establish her continuous residence and her continuous physical presence in the United States during the requisite periods.

On appeal, the applicant provides a brief statement and copies of documentation previously submitted.

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 first issue raised by the director to be addressed in this proceeding is whether the applicant is eligible for late registration.

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 July 5, 2006, upon the applicant's re-registration during the requisite time period.

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 initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reflects that the applicant filed her initial application with Citizenship and Immigration Services (CIS), on June 19, 2002. It is noted that the applicant filed a second TPS application on June 16, 2003. It is also noted that the applicant's application indicates that the applicant entered the United States on April 6, 2000.

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 own statements. 8 C.F.R. § 244.9(b).

The record of proceeding confirms that the applicant filed her application for TPS on June 19, 2002, after the initial registration period had closed. 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).

In a request for evidence, dated September 23, 2003, 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 continuous residence in the United States since December 30, 1998, and her continuous

physical presence in the United States since January 5, 1999. The applicant was further requested to submit evidence to show that [REDACTED] are one and the same person.

The director found that the applicant, in her response to the request for evidence, failed to submit any documentation to establish her eligibility for late registration, her continuous physical presence in the United States since January 5, 1999, and her continuous residence in the United States since December 30, 1998. The director also found that the applicant failed to submit proof of a name change. The director denied the application on January 22, 2003.

On appeal, the applicant states that she has a case pending with the Service; she is married to [REDACTED] who has a TPS card; and, that she was married by a judge at City Hall in Waukegan, Illinois. The applicant also states that when she submitted her application for TPS she provided proof for the years 1998 and 1999. The applicant resubmits a copy of her marriage license and a copy of her child's birth certificate.

The applicant's Marriage License contained in the record and resubmitted on appeal is sufficient in demonstrating that the applicant and [REDACTED] were married on May 5, 2001 in Lake County, Illinois. However, the applicant's marriage did not take place until after the initial registration period for TPS applicants from Honduras. Consequently, the applicant was not the spouse of an alien currently eligible to be a TPS registrant. Also, the record indicates that the applicant's pending case with the Service was terminated on November 14, 2000. However, the applicant did not file her application for late registration within 60 days of the expiration or termination of the condition described in 8 C.F.R. § 244.2(f)(2). Above all, the applicant's TPS application indicates that she did not enter the United States until April 6, 2000, almost eight months after the initial registration period had ended. The applicant is not eligible for late registration under 8 C.F.R. § 244.2(f)(2), as she arrived in the United States subsequent to the eligibility period. Consequently, the director's decision to deny the application for temporary protected status on this ground will be affirmed.

The second issue raised by the director to be addressed 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.

The phrase 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 phrase 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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

As previously stated, the director, in his decision dated January 22, 2003, found that the applicant had failed to establish her continuous residence and her continuous physical presence in the United States during the required timeframes.

On appeal, the applicant states that she presented "proof of the year 1998 and 1999" when she filed her TPS application. The applicant also states that she has nothing else.

No documentary evidence has been presented on appeal to establish that the applicant has been continuously residing in the United States since December 30, 1998, and that she has been continuously physically present in the United States since January 5, 1999. Further, as the record indicates that, the applicant did not enter the United States until April 6, 2000, more than one year after the qualifying timeframes, she could not possibly establish continuous residence and continuous physical presence in the United States from the onset of the requisite timeframes, until her entry into the United States on April 6, 2000. Consequently, the director's decision to deny the application for temporary protected status for these reasons will also 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.