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U.S. Citizenship
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Services



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JUN 06 2005

FILE:



Office: CALIFORNIA SERVICE CENTER Date:

[WAC 02 244 52685]

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 for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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

On appeal, the applicant reaffirmed her claim of continuous residence and continuous physical presence in the United States, and submitted 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.

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 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 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.

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. 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.

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed her initial application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on June 4, 2002.

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).

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

The record of proceedings confirms that the applicant filed her application 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).

On March 18, 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 establishing her qualifying residence and physical presence in the United States. The applicant, in response, provided documentation relating to her continuous residence and physical presence in the United States.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on July 14, 2003.

The record indicates that the applicant was apprehended by the United States Border Patrol near Del Rio, Texas, on June 19, 1993, and placed under deportation proceedings under another record, [REDACTED]. She told the apprehending officers during her sworn statement that she was a Honduran citizen, and her parents were Honduran citizens. The applicant was released on her own recognizance and issued a charging document ordering her to report to the Office of the Immigration Judge in Los Angeles, California, but she never reported to the Office of the Immigration Judge as ordered. There is no indication in the record that a deportation hearing was ever held.

When the applicant filed her asylum application on June 29, 1994, she claimed to be a native and citizen of Guatemala. She stated that she was born in Jutiapan, Guatemala, on April 8, 1995, and that she initially entered the United States without inspection near Laredo, Texas, on June 15, 1990. She explained that she was applying for asylum because she had belonged to a Guatemalan union of coffee workers from 1989 to 1990 and had participated in many anti-government demonstrations. She stated that she had distributed anti-government literature and held union planning meetings in her home. The applicant claimed that her local union office was raided by government security forces, and she and her family were imprisoned, beaten, and tortured. The applicant stated that she escaped from prison in a surprise raid staged by guerilla forces, and fled Guatemala.

The applicant claimed to be a Honduran citizen when she was apprehended by United States Border Patrol Officers on June 19, 1993, but claimed to be a national and citizen of Guatemala when she filed her asylum application in 1994. When she filed her application for TPS in 2002, she once again claimed to be a Honduran citizen. These contradictions in the applicant's claimed nationality raise serious questions regarding her current claim to be a Honduran citizen. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and

attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

In order to be eligible for late initial registration, an alien must meet all the requirements set forth at 8 C.F.R. § 244.2, including the requirement that the alien must be a national of a country designated for TPS by the Department of Homeland Security. In this case, in addition to the fact that the applicant did not file her application until June 4, 2002, since the applicant has not established that she is a Honduran national, she cannot meet the requirements for late registration set forth at 8 C.F.R. § 244.2(f)(2)(ii). Consequently, the director's conclusion that the applicant had failed to establish her eligibility for late registration will be affirmed.

The second 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 March 18, 2003, to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the following documentation:

1. an affidavit from [REDACTED] stating that he has known the applicant since 1994, "when she was working as [a] waitress at the La Pantera Bar [i]n Inglewood, California;" and,
2. a photocopy of the photograph and biographic pages of the applicant's Honduran passport.

The director concluded that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods and denied the application.

On appeal, the applicant reiterates her claim to have lived in the United States since July of 1993. She states that she worked at the Pantera Bar in Inglewood, California, "a few hours a week" for approximately four years. The applicant explains that she has very little documentation of any kind to establish her continuous residence and continuous physical presence in the United States during the requisite periods. The applicant submits a copy of a registration form from the Inglewood Unified School District in Inglewood, California, showing that [REDACTED] daughter of [REDACTED] of [REDACTED] attended Monroe Magnet Middle School from November 30, 1999 to February 2, 2001. She also submits a "Detention/Release Order" dated June 20, 2000, from the Superior Court of California, County of Los Angeles Juvenile Court, ordering that a minor, Francisco Sanders, be temporarily detained at the home of his aunt, [REDACTED] pending his next hearing on July 18, 2000.

The documents provided by the applicant are not sufficient to establish continuous residence and continuous physical presence in the United States during the requisite periods. Mr. [REDACTED] did not provide the applicant's addresses since 1994. Furthermore, the applicant has not provided any contemporaneous evidence to establish continuous residence and continuous physical presence in the United States since February 2, 2001. The applicant claims to have lived in the United States since July 1, 1993. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support her claim of continuous residence and continuous physical presence during the requisite periods; 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.

In addition, as previously stated, the applicant has not established that she is a national of a foreign state designated for TPS under section 244(b) of the Act. Therefore, the application also must be denied for this reason.

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.