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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUN 15 2005

[WAC 03 200 52978]

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, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office 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 had failed to establish that she was eligible for late registration.

On appeal, the applicant submits a statement.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 § 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 condition 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 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.

The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The record shows that the applicant attempted to file her TPS application on June 10, 2003. The application was returned to the applicant based on submission of an improper fee. The application was resubmitted by the applicant and was properly received at the California Service Center on June 17, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period from January 5, 1999 through August 20, 1999, she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

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).

In a notice of intent to deny dated August 26, 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). She was also requested to submit evidence to show that she had resided in the United States since December 30, 1998, and had been continuously physically present from January 5, 1999, to the date of filing the application. In addition, the applicant was requested to submit the final court disposition of her arrests on February 18, 1997, for sell/furnish marijuana/hashish, and on August 8, 1997, for possession/purchase coke base for sale.

The applicant, in response, provided evidence in an attempt to establish residence and physical presence in the United States, and copies of police records regarding her arrest of August 8, 1997; however, she failed to address the issue of eligibility for late registration.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on October 7, 2003.

On appeal, the applicant asserts that she had timely submitted her application but that the application was returned to her because she sent an incorrect fee. She requests that her case be reconsidered because she needs to work in order to provide for her family.

The applicant, however, failed to submit evidence to establish that she filed her application during the initial registration period from January 5, 1999 through August 20, 1999. 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).

The applicant has failed to submit 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 this reason will be affirmed.

It is noted that although the director, in his notice of intent to deny dated August 26, 2003, requested that the applicant submit the final court disposition of her arrests listed on the Federal Bureau of Investigation (FBI) fingerprint results report, he failed to address these arrests in his decision to deny dated October 7, 2003.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. *See* Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

*Felony* means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

*Misdemeanor* means a crime committed in the United States, either

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.

An alien is inadmissible if she has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe she is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

The FBI report reveals the following offenses:

- (1) On February 18, 1997, in Norwalk, California, the applicant, under the name of [REDACTED] was arrested for "SELL/FURNISH/ETC MARIJUANA/HASHISH," 11359 H&S, a felony. The FBI report shows that the applicant was subsequently convicted of "SELL FURNISH ETC MARIJUANA HASH," 11360(A) H&S, a felony. The applicant, however, failed to submit the actual court disposition of this arrest as requested by the director on August 26, 2003.
- (2) On August 8, 1997, in Los Angeles, California, the applicant, under the name of [REDACTED] was arrested for 'POSS/PUR COKE BASE FOR SALE. The applicant submitted the arresting officer's report for this offense (under the name of [REDACTED] and a letter from the Los Angeles Police Department, dated September 2, 2003 (under the name of [REDACTED] indicating: "11351 HS-POSSESS CONTRA SUBSTNCE FOR SALE (FELONY)," Booking Number [REDACTED] arrest date 08-08-97, "release by police officer- insufficient grounds. No case filing information found in L.A. County." The applicant, however, failed to submit court records regarding this arrests, although she was originally advised by the Los Angeles Police Department (in an undated letter) to contact the Criminal Courts Building, [REDACTED]

Although the director failed to address in his decision to deny the applicant's arrests detailed in Nos. 1 and 2 above, the applicant was requested, in a notice of intent to deny dated August 26, 2003, to submit the final court disposition of all her arrests. She was advised that the final disposition should be obtained from the court where the hearing took place, not from the police station. The applicant ultimately has failed to submit the final court disposition of her arrests from the court. These criminal offenses may render the applicant ineligible for TPS as an alien convicted of a felony, and inadmissible to the United States under sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act based on a drug-related conviction. Sections 244(c)(2)(B)(i), 8 C.F.R. § 244.4(a), and 244(c)(1)(A)(iii) of the Act.

Accordingly, the applicant is also ineligible for TPS because of her failure to provide the final court dispositions of all her arrests as requested by the director. 8 C.F.R. § 244.9(a).

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.