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Washington, DC 20529



U.S. Citizenship
and Immigration
Services



M1

FILE:



Office: Vermont Service Center

Date:

MAR 6 2005

[EAC 03 209 53679]

IN RE:

Applicant:



APPLICATION:

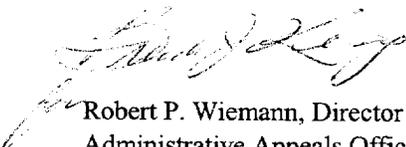
Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

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, Vermont Service Center, and is now before the Administrative Appeals Office 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 denied the application because the applicant failed to establish she was eligible for late registration. The director also denied the application because the applicant failed to establish her qualifying continuous residence and physical presence in the United States during the requisite periods.

On appeal, the applicant asserts her eligibility for TPS and submits 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 is eligible for TPS 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 § 244.4; and
- (f)
 - (1) Registers for Temporary Protected Status 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. 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 Citizenship and Immigration Services (CIS), on July 1, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or 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 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 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 or her own statements. 8 C.F.R. § 244.9(b).

On August 19, 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 continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States from January 5, 1999, to the date of filing her application. In response, the applicant submitted some evidence in an attempt to establish her continuous residence and continuous physical presence in the United States; however, the applicant did not submit any evidence to establish her eligibility for late registration. The director determined that the applicant had failed to establish she was eligible for late registration. The director also determined that the applicant had failed to establish that she had continuously resided in the United States since December 30, 1998, and had been continuously physically present in the United States since January 5, 1999, to the date of filing her application. The director, therefore, denied the application on January 29, 2004.

On appeal, the applicant indicates that she has documents pertaining to the Immigration and Naturalization Service (INS), dated May 7, 1999. The applicant also references her other file number, [REDACTED] as evidence of her eligibility for TPS. The applicant also provides the following documentation along with her appeal: a copy of the biographical pages of her Honduran passport; a copy of her student identification card from the Evans Adult School, valid until June 30, 2000; a copy of a Form I-830, Notice to EOIR: Alien Address, dated May 8, 1999; a copy of a Form I-286, Notice of Custody Determination, dated May 7, 1999, indicating that she was released from INS custody under bond dated May 8, 1999; copies of various receipts dated August 4, 2001, July 20, 2002, July 22, 2002, May 5, 2003, May 23, 2005, June 22, 2003, and July 27, 2003; a copy of her Verizon telephone billing statement dated January 16, 2004; a copy of her Social Security card; a copy of her son's New York Benefits Identification Card; a copy of her son's birth certificate dated June 7, 2002; copies of a Notice of Decision dated June 14, 2002, from the Nassau County Social Services; and a copy of her medical examination dated October 29, 2001.

The first issue in this proceeding is whether the applicant has established her qualifying continuous residence and continuous physical presence in the United States. On appeal, the applicant submits additional documentation in an attempt to establish her continuous residence and continuous physical presence in the United States during the qualifying time periods; however, all the evidence postdates the requisite time periods for Honduran TPS. Further, a review of the CIS' systems reflects that the applicant was apprehended by the United States Border Patrol on May 7, 1999, and released under an order of recognizance on May 8, 1999. In addition, the applicant stated on the Form I-821, Application for Temporary Protected Status, that she did not enter the United States until May 7, 1999. Therefore, she could not have met the requirements that she had continuously resided in the United States since December 30, 1998, and had been continuously physically present since January 5, 1999. The applicant has, thereby, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

The second 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).

The applicant claims, on appeal, that she meets the criteria for TPS late registration as described in 8 C.F.R. § 244.2(f)(2). According to the CIS' systems, the applicant was apprehended on May 7, 1999, and ordered removed by an immigration judge on July 28, 1999, under file number [REDACTED]. In this case, since the applicant's qualifying condition expired on July 28, 1999, her 60-day period for late registration actually expired on September 27, 1999. The applicant filed her application nearly four years later on July 1, 2003. The applicant did not file her application during the initial registration period or during the allotted 60-day late registration period described in 8 C.F.R. § 244.2(g). In addition to meeting the criteria for late registration, the applicant must also establish her qualifying continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999. As described above, she has not met the continuous residence and continuous physical presence eligibility requirements for TPS. Therefore, the director's decision to deny the application for TPS late registration will also be affirmed.

An alien applying for TPS 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.