

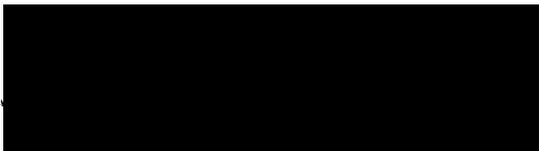
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship and Immigration Services



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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: MAR 25 2005
[WAC 03 025 53308]

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.

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 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 had failed to: (1) provide the requested court documentation relating to her criminal record; and (2) provide the requested "late registration explanation requirements."

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 applicant who is a national of a foreign state is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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.

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 January 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 filed her TPS application on September 6, 2002.

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).

On November 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). The applicant was also requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. Finally, the applicant was requested to submit police clearances from every city where she had lived since arriving in the United States, and to also submit final court dispositions of all arrests in the United States. The applicant, in response, furnished documents to establish her nationality, continuous residence, and continuous physical presence in the United States.

The director determined that the applicant had failed to submit all the requested information to establish her eligibility for TPS and denied the application on January 8, 2004.

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

The record of proceeding 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 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).

In his decision to deny, the director determined that the applicant had failed to provide the requested "late registration explanation requirements."

The applicant, on appeal, states that she has provided all the evidence to establish that she has been living in the United States for over 10 years. She asserts that she had timely registered for TPS and that the person who did her initial registration did send the application on the due date.

It is noted, however, that the TPS application was properly received at the California Service Center on September 6, 2002. The record of proceeding contains a letter from [REDACTED] of "Unidad Hondurena" in Los Angeles, California, indicating that [REDACTED] with [REDACTED] he wants to include his wife: E [REDACTED] under the law of her Temporary Protection Status by Honduras as beneficiary." Attached to this letter is a marriage certificate between the applicant and [REDACTED] indicating that the couple married in Yoro, Honduras, on January 12, 1990.

While the regulations may allow spouses of aliens who are TPS-eligible to file their applications after the initial registration period had closed, these regulations do not relax the requirements for eligibility for TPS. The Honduran marriage certificate shows several alterations and appears to be a fraudulent document. Furthermore, although the certificate shows that the couple were married in Honduras on January 12, 1990, the

record of proceeding shows that the applicant was apprehended by the Border Patrol while attempting to enter the United States without inspection on March 2, 1989, near the San Ysidro, California, port of entry. There is no evidence in the record that the applicant returned to Honduras subsequent to her entry on March 2, 1989. It is also noted that the applicant indicated on her application for TPS that she entered the United States without inspection on February 5, 1989, and that she has resided in the United States since that time. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. The document noted above is not considered credible and greatly reduces the credibility of other documents contained in the record of proceeding.

The applicant has failed to submit credible 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 TPS due to late registration will be affirmed.

The final issue in this proceeding is the applicant's ineligibility based on her criminal record.

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 he 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 he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

In the decision dated January 8, 2004, the director stated that the applicant was ineligible for TPS because she had failed to provide the requested court disposition of her arrest on August 22, 1994. He noted that the court document she submitted was for a traffic violation in the County of San Bernardino (listed as No. 1 below).

The record reveals the following:

- (1) On November 30, 1994, in the San Bernardino County Municipal Court District, West Valley Division, California, Case No. [REDACTED] (arrest date July 13, 1994), the applicant entered a plea of guilty to hit and run driving causing property damage, 20002(a) VC, a misdemeanor. The court ordered judgment withheld and conditional and revocable release was granted for a period of 2 years on condition that she pay a fine in the amount of \$381, and make restitution to the victim.
- (2) The Federal Bureau of Investigation fingerprint results report shows that on August 22, 1994, in San Bernardino, California, the applicant was arrested for possession of marijuana for sale, 11359 H&S. The final court disposition of this arrest is not contained in the record, although the applicant was requested on November 26, 2003, to submit the final court dispositions of any and all arrests.

On appeal, the applicant states that she has provided the court dispositions of her arrests and that she is providing copies of documents she previously furnished.

The applicant, however, failed to provide the final court disposition of her arrest listed as No. 2 above. The applicant is ineligible for temporary protected status because of her failure to provide information necessary for the adjudication of her application. 8 C.F.R. § 244.9(a). Consequently, the application also must be denied for this reason.

It is noted that Form I-221S (Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien) was issued in San Diego, California, on March 3, 1989. Because the applicant failed to appear at a scheduled hearing on July 20, 1989, the Immigration Judge administratively closed removal proceedings.

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.