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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]
[LIN 03 248 50209]

Office: Nebraska Service Center

Date:

MAY 04 2005

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.

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 (AAO) 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 for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, the applicant had failed to establish her eligibility for late TPS registration. The director also found that the applicant had failed to establish her entry into the United States as well as her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

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 reveals that the applicant filed her initial application [SRC 02 150 54087] with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on April 16, 2002, after the initial registration period had closed. That application was denied. Although the applicant's file does not contain a copy of the denial notice, CIS electronic records reflect that the denial notice was mailed to the applicant's address of record on July 12, 2002. The applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on August 14, 2003. The director denied this second application [LIN 03 248 50209] on November 19, 2003, because the applicant failed to establish her eligibility for TPS late registration. The director also denied the application because the applicant had failed to establish her date of entry into the United States as well as her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed a subsequent Form I-821 on August 14, 2003. Since the initial application was denied on July 12, 2002, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

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 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 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 application with Citizenship and Immigration Services (CIS), on August 14, 2003.

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 September 17, 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 also was requested to submit evidence establishing her date of entry into the United States as of December 30, 1998, her continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States from January 5, 1999. Also, the applicant was requested to submit photo identification. In response, the applicant provided a copy of her Honduran passport and some evidence of her qualifying continuous residence and continuous physical presence in the United States; however, she 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 failed to establish that she entered the United States prior to December 30, 1998, had continuously resided in the United States since December 30, 1998, and had been continuously physically present in the United States from January 5, 1999. Therefore, the director denied the application on November 19, 2003.

On appeal, the applicant submits the following documentation: an employment letter dated December 4, 2003, from Ms. [REDACTED] Office Manager of Specialists in Temporary Personnel, who stated that the applicant had worked as an employee for her from November 1999 to December 2000; and a copy of a printout of her payroll record reflecting pay dates from November 30, 1999 to August 21, 2000. The applicant submits additional evidence in an attempt to establish her continuous residence and continuous physical presence in the United States. The applicant, however, has not submitted 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 TPS on this ground will be affirmed.

The second issue in this proceeding is whether the applicant has established her date of entry into the United States prior of December 30, 1998, 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 employment letter from Ms. [REDACTED] indicates that the applicant was employed with Specialists in Temporary Personnel from November 1999 to December 2000. The applicant's period of employment as reflected in the employment letter and the copy of her payroll records, however, postdate the requisite time periods for Honduran TPS by almost one year. The applicant has not submitted sufficient evidence to establish her date of entry into the United States prior to December 30, 1998, her qualifying continuous residence in the United States since December 30, 1998, or her continuous physical presence in the United States since January 5, 1999. The applicant has, therefore, 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 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.