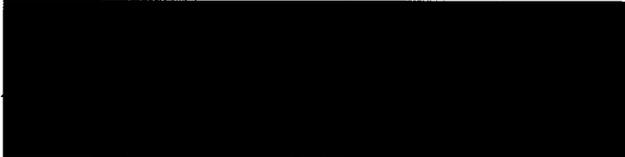


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FILE:



OFFICE: VERMONT SERVICE CENTER

Date: NOV 03 2005

[EAC 04 118 50805]

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:



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 (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 because the applicant failed to establish that she was eligible for late registration. The director also found that the applicant had failed to establish continuous physical presence in the United States since January 5, 1999.

On appeal, the applicant submits a statement and additional evidence.

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 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.
- (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.

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 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 March 11, 2004.¹

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 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 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).

¹ It is noted that the applicant filed a prior TPS application on July 2, 2002 under CIS receipt number EAC 02 241 51346. The director denied that application on May 13, 2003, after determining that the applicant had abandoned her application by failing to respond to a request for additional evidence dated October 17, 2002. The applicant was informed that there is no appeal from a denial due to abandonment, but she could file a motion to reopen within 30 days. The applicant failed to file a motion to reopen.

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 fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The applicant submitted with her prior Form I-821 a photocopy of a State of New York marriage license indicating that the applicant and [REDACTED] a citizen of Honduras, were married in Port Jefferson Station, New York, on February 14, 2002, along with a photocopy of an Employment Authorization Card valid from July 6, 2001 to July 5, 2002, indicating that [REDACTED] CIS registration number [REDACTED] a pending TPS application before CIS.

On June 3, 2004, 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 of identity and nationality and evidence establishing her qualifying continuous residence in the United States. The applicant, in response, provided documentation relating to her identity and nationality and evidence relating to her 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 September 3, 2004.

On appeal, the applicant does not make a statement or provide any evidence establishing her eligibility for late registration.

While the evidence of record confirms that the applicant's husband has applied for TPS, the record also shows that the applicant was not married until February 14, 2002. In order to be eligible for late registration, the qualifying relationship must have existed during the initial registration period. 8 C.F.R. § 244.2(f)(2). Since the applicant, during the initial registration period, was not the spouse of an alien currently eligible to be a TPS registrant, she is not eligible for late registration on this basis. The applicant has not submitted any evidence to establish that she has met any of the other criteria for late registration described in 8 C.F.R. § 244.2(f)(2). 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.

The applicant indicated on both her prior Form I-821 and the current Form I-821 that she first entered the United States on March 8, 1999. The applicant submitted the following in support of her prior Form I-821:

1. a photocopy of a mailing envelope postmarked April 30, 2001;
2. a photocopy of an Urgente Express money transfer receipt dated December 19, 1999;

3. photocopies of Western Union money transfer receipts dated January, 25, 2002 and May 24, 2002;
4. a photocopy of a United States Postal Service Express Mail receipt dated January 29, 2001; and,
5. a photocopy of a [REDACTED] earnings statement for the period from December 6, 1999 to December 19, 1999.

In support of the current Form I-821, she submitted the following:

6. photocopies of her 1999, 2000, 2001, 2002, and 2003 Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statement, from [REDACTED] of New York, Inc.

As stated above, the applicant was requested on June 3, 2004, to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the following documentation:

7. photocopies of the Forms W-2 listed in No. 6 above;
8. a letter dated June 9, 2004, from [REDACTED] General Manager of [REDACTED] Port Jefferson Station, New York, stating the applicant has been employed by [REDACTED] since October 29, 1999.

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

On appeal, the applicant states that she would like to amend her Form I-821 to indicate that she first arrived in the United States "sometime in March 1998, rather than the date of March 1999." In support of her assertion, the applicant submits an affidavit dated September 14, 2004, from [REDACTED] that he and the applicant are friends, and that he has known her "since sometime around June, 1998."

The applicant has provided only the affidavit from Mr. [REDACTED] to corroborate her "amended" date of entry into the United States. She has not provided any independent evidence to corroborate Mr. [REDACTED] statements. Without corroborative evidence, affidavits are not sufficient to establish an applicant's qualifying continuous residence and continuous physical presence. Moreover, affidavits are only specifically listed as acceptable evidence of employment and membership in organizations such as churches or labor unions as described at 8 C.F.R. § 244.9(a)(2)(i) and (v).

Furthermore, the applicant has not provided any explanation for her failure to provide this "amended" date of arrival on either of her Forms I-821. 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. Further, it is

incumbent on 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

The applicant has not submitted any evidence to establish her qualifying continuous residence in the United States during the period from December 30, 1998, to October 29, 1999, the date the applicant began her employment for [REDACTED] in Port Jefferson Station, New York (No. 8 above). She has, therefore, failed to establish that she has met the criterion described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for TPS on this ground will also be affirmed.

Beyond the decision of the director, the applicant has also failed to establish continuous physical presence in the United States since January 5, 1999 as described at 8 C.F.R. § 244.2(b). Therefore, the application also must be denied for this reason.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.