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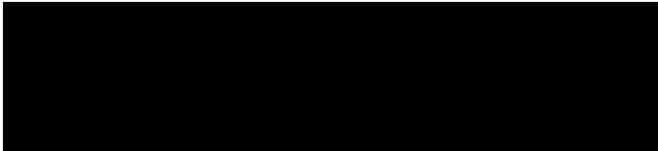
Office: TEXAS SERVICE CENTER

Date: OCT 31 2008

[SRC 02 117 54758]

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.

Cindy M. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Temporary Protected Status (TPS) application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed as moot, because the applicant has an approved TPS application under another A-file record.

The applicant is a native and citizen of Honduras who is applying for 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.

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 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 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. 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 reveals that the applicant filed this TPS application with CIS on February 28, 2002.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for late initial registration. 8 C.F.R. § 244.2(g).

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 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).

On May 17, 2002, 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 during the requisite periods. The applicant, in response, provided documentation relating only to her residence and physical presence in the United States, consisting of a lease document.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on August 15, 2002.

On appeal, the applicant states that she did register on time but did not receive an answer from the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS). She states that when she tried to obtain information, the CIS phones were busy or had only answering machines. The applicant also states that she is married to a TPS registrant, and applied for TPS with him in 1999, but received no response. In support of the appeal, the applicant submits photocopies of the following documentation:

1. A page stamped "FD-258 Completed at INS/ASC Manhattan, NY on: 10/7/99," and the fingerprint "Applicant Information Worksheet" bearing the applicant's name and a different A-number, A94 348 590;
2. A letter from a Human Resources Representative, Barnes & Noble, Inc., Distribution Center, Jamesburg, New Jersey, stating that the applicant worked as a Warehouse Clerk from August 23, 1999 until January 20, 2002; this is also accompanied by an original pay stub for the period beginning December 30, 2001;
3. An Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, for the year 2000, from B. Dalton Bookseller, Inc., a division of Barnes & Noble;
4. A Patient Registration Sheet and "Gyn Progress Notes" for the Eric B. Chandler Health Center, New Brunswick, New Jersey, dated July 16, 1999;
5. A document relating to her pregnancy bearing dates September 22, 1999, April 18, 2000 and June 29, 2000, and an invoice for postpartum clinical services dated August 1, 2000;
6. Receipts in her name dated in early 1999;
7. A letter dated July 19, 1999, from the Middlesex County Board of Social Services, New Brunswick, New Jersey, stating that the applicant was not categorically eligible for Medicaid;
8. The employment authorization documents (EAD) for her husband, [REDACTED], indicating validity under Category C19 for the period of January 13, 2000 through July 5, 2000, and subsequent TPS approval, with validity under Category A12 beginning from July 6, 2000, through July 5, 2002;
9. A record search, indicating no arrest record, from the City of New Brunswick, New Jersey, Police Headquarters, dated September 13, 2002; and,
10. Honduran passports for the applicant and [REDACTED] both issued on "10-7-99," by the Consulate General, New York, New York, and a United States passport for their son, [REDACTED] Matute, born on July 7, 2000, in New Jersey.

A review of the applicant's other record, [REDACTED] listed on the fingerprint worksheet described at Number 1 above, reflects that the applicant, while living in New Jersey, initially applied for TPS through the Vermont Service Center on June 23, 1999, during the initial registration period [EAC 99 209 50502]. The initial Form I-821 was denied due to abandonment on May 9, 2000. The applicant filed an untimely Motion to Reopen. The service center director did not issue a written decision on the motion to reopen, but reopened the matter and issued a new Request for Additional Evidence dated December 30, 2002, on the original 1999 TPS receipt number. The applicant responded with photocopies of some of the documentation listed above that was also included in the other A-file record. The applicant's Form I-821, Application for Temporary Protected Status, filed on June 23, 1999, bears a stamp indicating that the applicant received approval of TPS on June 3, 2003.

Therefore, the appeal based on the Texas Service Center's director's denial decision on the [REDACTED] record will be summarily dismissed as moot as the applicant already has TPS approval under her other A-file record, [REDACTED]. It is noted that the applicant's files shall be consolidated into the original record.

Additionally, for purposes of re-registration, this subsequent filing shall be considered as the applicant's compliance with the re-registration provisions of TPS.

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 met this burden.

ORDER: The appeal is dismissed, based upon the applicant's TPS approval under her prior record, [REDACTED].