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U.S. Citizenship
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Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: AUG 28 2006

[WAC 05 078 78696]

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 California Service Center. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "R. Wiemann".

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be 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 record reveals that the applicant filed an initial TPS application on July 19, 2001, under Citizenship and Immigration Services (CIS) receipt number SRC 01 244 53991. The Texas Service Center (TSC) Director denied that application on October 31, 2001, because the applicant failed to establish 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 director noted that the applicant certified, under penalty of perjury, on her Form I-821, Application for Temporary Protected Status, that she had entered the United States in "March 2000." On June 28, 2002, the applicant filed a subsequent TPS application under Citizenship and Immigration Services (CIS) receipt number SRC 02 215 54336. The TSC Director denied that application on August 31, 2004, after determining that the applicant had failed to establish her continuous residence and continuous physical presence in the United States during the requisite periods.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 7, 2004, and indicated that she was re-registering for TPS.

The director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, the applicant states that she is eligible for late initial registration as the child of an approved TPS registrant. In support of the appeal, the applicant submits photocopies of her Texas Identification Card issued in 2004, and a lease document dated in 1998 listing her as an occupant. She also resubmits documentation that had previously been entered into the record, including: earnings statements; school and medical records; a Honduran birth certificate issued in April of 2001, indicating [REDACTED] as her mother; the Employment Authorization document (EAD) [REDACTED] under Category A12 with validity from June 23, 2005 through July 5, 2006; and the biographic page of a Honduran passport that bears no date of issuance or expiration.

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.

In this case, the applicant has not previously been granted TPS. Therefore, she is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

It is noted that the director's decision does not explore the possibility that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant may apply for TPS during the initial registration period, or:

- (f) (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 initial registration period for Hondurans was from January 5, 1999 to August 20, 1999. The record reveals that the applicant filed the current application with CIS on December 7, 2004.

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 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).

The applicant has failed to provide sufficient evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Although the applicant indicated that her mother was an approved TPS registrant, for reasons discussed below, the applicant has not conclusively demonstrated that her mother is, in fact, a TPS registrant and that she is therefore eligible for late registration. The applicant, therefore, does not appear to be eligible for late initial registration under 8 C.F.R. § 244.2(f)(2)(iv).

The Federal Bureau of Investigation (FBI) fingerprint results report reflects that the applicant has another record of proceedings under file number A77 698 417. Review of this record reveals that the applicant was apprehended by the United States Border Patrol while attempting entry into the United States at or near Brownsville, Texas, on or about March 27, 2000. According to the record created at that time, the applicant was identified as a national of El Salvador and indicated her father's name [REDACTED] and her mother as [REDACTED] both of El Salvador. The record contains a Warrant of Removal/Deportation issued at Houston, Texas, on July 20, 2000, following the final order of removal *in absentia* issued by the Immigration Judge, Houston, Texas, on June 1, 2000.

Even if it were determined [REDACTED] is the applicant's mother, while regulations allow for the child of a TPS registrant to submit a TPS application as a late initial registration, the regulations do not relax the requirements that individual TPS applicants must meet. In this case, the applicant has not established her continuous residence in the United States since December 30, 1998, and her continuous physical presence since January 5, 1999. Her date of entry in March 2000 precludes a favorable finding as to her continuous residence and continuous physical presence in the United States during the requisite periods. In addition, some of the evidence submitted in an attempt to establish the applicant's continuous residence and continuous physical presence in the United States appears to have been altered. 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Therefore, the applicant has not established that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c), and the application must also be denied for these reasons.

Beyond the decision of the director, applicant has claimed two different names, nationalities, and sets of parents. The record contains photocopies of two Honduran birth certificates, with English translation, in the name of [REDACTED]. One copy indicates that it was issued on May 30, 2001, and the other that it was issued on April 27, 2001. One document does not state the father's name and the other indicates the father as [REDACTED]. The biographic page of the Honduran passport in the name of [REDACTED] bears no date of issuance or expiration. Under the other record of proceedings, the applicant is identified as El Salvadoran. The applicant failed to submit a national identity document from her country of origin bearing a photograph and/or fingerprint, and that was issued prior to her stated arrival in the United States. Under these circumstances, the submitted documentation alone is insufficient to establish the applicant's identity and nationality under the provisions of 8 C.F.R. § 244.9(a)(1). Therefore, the application must also be denied for this reason.

It is noted that the applicant initially certified her date of entry into the United States as March of 2000. On her Forms I-821 and applications for employment authorization submitted after the denial of her initial TPS application the applicant now is asserting entry into the United States as "about 08-98," a date earlier than her actual date of entry in an apparent attempt to gain benefits for which she is not otherwise eligible. Any misrepresentation of a material fact may also cause the applicant to be subject to further prosecutorial review.

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 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.