



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[EAC 01 254 51409]

OFFICE: Vermont Service Center

DATE: MAY 03 2006

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:



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 on appeal. The appeal will be dismissed.

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 initial registration.

On appeal, counsel for the applicant states that the applicant is eligible to file for TPS under the late initial filing provisions of the regulations because at the time of the initial registration period, her application for adjustment of status was subject to review. Counsel states that “rather than continuing to pursue her application for adjustment of status, the applicant has instead opted to apply for temporary protected status.” Counsel asserts that, pursuant to section 244.2 of the Act, the 60-day grace period does not toll until after the expiration of the review or appellate process.

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.

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. 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 July 10, 2001.

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 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

On September 19, 2001, 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.

In response, counsel submitted evidence of the applicant's residence in the United States. In addition, counsel asserted that the applicant was eligible to file for TPS under the late initial filing provisions of the regulations because, at the time of the initial registration period, her application to Register Permanent Residence or Adjust Status, Form I-485, was subject to further review. However, the record reflects that the applicant's application for readjustment of status was denied on October 10, 2000 due to abandonment. A denial due to abandonment may not be appealed, however, an applicant or petitioner may file a motion to reopen under 8 C.F.R. § 103.5. The record does not reflect that a motion was subsequently filed.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on January 7, 2002.

On appeal, counsel states that the applicant was placed in removal proceedings after the application for adjustment of status was denied. He states that the form I-485 application for adjustment of status was, therefore, subject to further review by an immigration judge. Counsel submits a copy of a May 4, 2001 Notice of Hearing in Removal Proceedings, informing the applicant that her case had been scheduled for a Master Calendar hearing in Arlington, Virginia, on August 8, 2001.

Pursuant to 8 C.F.R. § 244.2(f)(2)(g), an application for TPS must be filed within the 60-day period immediately following the termination of the conditions mentioned in paragraph (f)(2) above. In the applicant's case, her application for adjustment of status was denied due to abandonment on October 11, 2000. The applicant was allotted a 30-day period in which to file a motion to re-open, but she failed to do so. In accordance with CIS regulations, the application for TPS would have had to have been filed no later than December 10, 2000. As stated above, the applicant's initial application was not filed until July 10, 2001.

Aliens applying under the provisions for late initial registration must prove that they are eligible because during the initial registration period of January 5, 1999 through August 20, 1999, they fell within the provisions described in paragraph (f)(2) above.

The applicant did not file her application during the initial registration period or during the allotted 60-day late registration period described in 8 C.F.R. §244.2(g). Consequently, the director's decision to deny the application for temporary protected status will 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.