

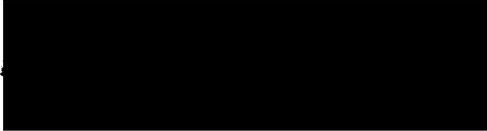


U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: MAY 03 2006

[WAC 05 105 74391]

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

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

The applicant is a 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 applicant filed her initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on August 6, 2001, under receipt number SRC 01 252 55756. The Director of the Texas Service Center initially denied the application on February 14, 2002, because she concluded the applicant failed to appear for her fingerprint appointment or request that her fingerprint appointment be re-scheduled. On October 2, 2003, the director reopened the matter sua sponte and withdrew the previous decision because she found the applicant had appeared for her fingerprint appointment as scheduled. On October 3, 2003, the applicant was requested to provide evidence to establish her eligibility for late initial registration and evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant, in response, provided evidence establishing that her mother, Juana Maria Avila-Flores, had been granted TPS under CIS registration number [REDACTED]. The director denied the application again on November 10, 2003, because she found the applicant had failed to provide evidence establishing her eligibility for late initial registration and evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant did not file an appeal or a motion to reopen the denial decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 13, 2005, and indicated that she was re-registering for TPS or renewing her temporary treatment benefits.

The director denied the application on June 28, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration or renewal of her temporary treatment benefits.

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. If an applicant is applying for renewal of temporary treatment benefits, he or she must have a pending TPS application.

In this case, the applicant has not previously been granted TPS. Therefore, she is not eligible to re-register for TPS or to renew temporary treatment benefits. 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) (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 initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The record reveals that the applicant filed the current TPS application with CIS on January 13, 2005.

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 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).

The applicant has provided, both with the initial application and in response to the Notice of Intent to Deny dated October 3, 2003, evidence establishing that her mother, [REDACTED] has been granted TPS under CIS registration number [REDACTED]. The applicant has provided evidence establishing her eligibility for late initial registration under 8 C.F.R. § 244.2(f)(2)(iv).

However, even though the applicant has established her eligibility for late initial registration, this does not relax the remaining requirements for eligibility for TPS. The applicant has failed to establish continuous residence in

the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999. The applicant indicated on her initial TPS application that she entered the United States on August 8, 1998. The applicant's mother, [REDACTED] indicated on her own Form I-821, filed on July 6, 1999, that her daughter, [REDACTED] was living in Honduras. This statement contradicts the applicant's claim that she entered the United States in August 1998. The applicant has not provided any explanation for this discrepancy in her claimed date of entry into the United States. 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 submitted the following evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods:

1. a photocopy of her North Carolina learner's permit issued on April 4, 2003, valid until October 4, 2004;
2. a letter dated December 6, 2004, from [REDACTED] of JJC Enterprises, Inc., in Rose Hill, North Carolina, stating that the applicant worked for him from October 1998 to July 2001.

The employment affidavit from JJC Enterprises has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the affiant does not provide any information regarding the applicant's duties for his company or the address where the applicant resided during the period of her employment.

On appeal from the current denial decision, the applicant states that she can provide no other evidence to establish her date of entry in the United States.

The applicant has not submitted sufficient evidence to establish her continuous residence in the United States since December 30, 1998, or her continuous physical presence in the United States since January 5, 1999, as described at 8 C.F.R. §§ 244.2(b) and (c). 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 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.