U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAY 08 2006
[WAC 05 103 79540]

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: 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.

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 citizen of Honduras who is seeking TPS under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the applicant's application for re-registration, under section 244 of the Act, because the applicant's initial TPS application had been denied.

On appeal, the applicant states that she is not submitting any 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 issue in this proceeding is whether the applicant is eligible to file for re-registration under section 244 of the Act.

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 in the United States 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.

As stated in 8 C.F.R. § 244.1 "register" means "to properly file, with the director, a completed application with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

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 own statements. 8 C.F.R. § 244.9(b).

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reflects that the applicant filed her initial application with Citizenship and Immigration Services (CIS), on August 23, 2002. That application was denied for abandonment on March 11, 2003, because the applicant failed to respond to the Service's notice for additional evidence. The applicant was given until April 13, 2003 to file a motion to reopen.

The applicant did not file a motion to reopen.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on December 31, 2003.

In a notice of intent to deny, dated February 10, 2004, the applicant was requested to submit evidence to establish her eligibility to file for late registration. The applicant was also requested to submit evidence 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 applicant failed to respond to the notice of intent to deny.

In a decision dated March 30, 2004, the director determined that that the applicant failed to establish her continuous residence and continuous physical presence in the United States during the requisite timeframes. The director also determined that the applicant failed to establish her eligibility to file for late registration. The director denied the application. The applicant was given until May 2, 2004, to file an appeal.

The applicant filed an appeal on May 27, 2004.

In a decision dated September 17, 2004, the director rejected the appeal as untimely filed, as it was filed "over the prescribed 33 days." The director also determined that the appeal could not be treated as a motion to reopen and reconsider, as the applicant did not meet the requirements of a motion in accordance with 8 C.F.R. § 103.5(a)(2) or (3).

The applicant filed a subsequent Form I-821, on January 11, 2005.

Any Form I-821 application subsequently submitted by the same applicant after an initial TPS application is filed and a decision rendered must be considered as either a request for annual registration or as a new filing for TPS benefits. The applicant indicated on her Form I-821 application that she was re-registering for TPS.

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.

Since the initial TPS application was denied on March 30, 2004, and a second application was denied on May 30, 2004, the subsequent application filed on January 11, 2005, cannot be considered as a re-registration. Consequently, the applicant is not eligible to file for re-registration under section 244 of the Act. Therefore, the director's decision to deny the application on this ground will be affirmed.

Beyond the decision of the director, the record contains no documentary evidence to establish that the applicant has been continuously residing in the United States since December 30, 1998, and continuously physically present in the United States since January 5, 1999. In addition, the applicant has not provided documentation to establish her nationality and identity. The record contains a copy of what appears to be a birth certificate written in a foreign language with no English translation. 8 C.F.R. § 204.1(f)(3) states that foreign language documents must be accompanied by an English translation, which has been certified by a competent translator. Therefore, the application must also be denied for these reasons.

The application will be denied for the above 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.