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MAY 08 2006
Date:

FILE:



Office: CALIFORNIA SERVICE CENTER

[WAC 05 096 74609]

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, 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 Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The record reveals that on June 3, 2003, the applicant filed an earlier TPS application under Citizenship and Immigration (CIS) receipt number SRC 03 171 53657. The Texas Service Center Director denied that application due to abandonment on December 30, 2003, because the applicant failed to respond to a request to establish her eligibility for TPS. The applicant had been requested to submit evidence establishing her: qualifying continuous residence in the United States since December 30, 1998; continuous physical presence in the United States since January 5, 1999; eligibility for late initial registration; nationality; and identity. Because the initial application was denied due to abandonment there was no appeal available; however, the applicant could have filed a motion to reopen within 33 days of the date of the decision. The applicant did not file a motion to reopen the previous decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 4, 2005, 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.

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 January 4, 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 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 any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Therefore, the application also must be denied for this reason.

In addition, the applicant also has failed to submit sufficient credible 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 records of CIS reflect that the applicant has another record of proceedings under file number [REDACTED]. Review of this record reveals that the applicant was apprehended by the United States Border Patrol on June 24, 2000, while attempting to board a flight from McAllen, Texas, to Houston, Texas. According to the record, the applicant indicated at that time of her apprehension that she had entered the United States without inspection on June 23, 2000, after having left Honduras on June 10, 2000. Therefore, the applicant has not met the requirements under 8 C.F.R. § 244.2(b) and (c) and the application must also be denied for these reasons.

Further, the record contains a photocopy of a birth certificate, with English translation. The Honduran passport contained in the record [REDACTED] bears evidence of having been altered. The applicant failed to submit photo identification or a national identity document from her country of origin bearing a photograph and/or fingerprint. The birth certificate and altered passport alone are 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.

The record of proceedings under [REDACTED] contains a Warrant of Removal/Deportation issued on April 20, 2001, at Miami, Florida, following the final order of the Immigration Judge, Miami, Florida, also dated April 20, 2001, in which the applicant was ordered removed to Honduras *in absentia*.

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.