



U.S. Citizenship
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Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: MAY 31 2006

[WAC 05 078 71482]

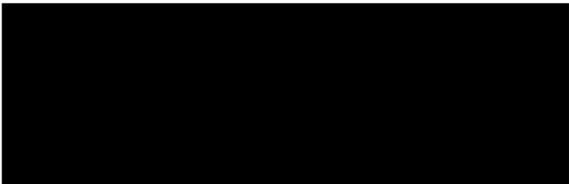
IN RE:

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:



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 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 record reveals that the applicant filed her initial TPS application under CIS receipt number EAC 99 205 50527 on June 4, 1999. On December 21, 1999, the applicant was requested to submit evidence to establish her qualifying continuous residence and continuous physical presence in the United States. The Director, Vermont Service Center (VSC), denied that application on May 17, 2000, due to abandonment, because the record did not contain a response from the applicant.

On June 16, 2003, the applicant filed a subsequent TPS application under CIS receipt number EAC 03 200 51768 which was denied by the VSC Director on October 21, 2003, because the applicant failed to establish her eligibility for TPS late registration.

The applicant filed the instant Form I-821, Application for Temporary Protected Status, on December 17, 2004, and indicated that she was re-registering for TPS.

The director denied the instant 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, through August 20, 1999. The record reveals that the applicant filed the instant application with Citizenship and Immigration Services (CIS) on December 17, 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.

On appeal, counsel states that the director abused his discretion in denying the applicant's TPS application.

The record reveals that the applicant filed her initial application for TPS on June 4, 1999. On September 27, 1999 and again on December 21, 1999, the director requested the applicant to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The record further reflects that the applicant did not respond to the director's requests; therefore, the director denied her application due to abandonment.

A review of the record of proceedings reflects that the director's September 27, 1999 and December 21, 1999, requests for evidence were sent to the applicant's last known address at [REDACTED] in Brooklyn, New York. In addition, the record also reveals that the director's decision to deny the TPS application dated May 17, 2000, was sent to the applicant's last known address at [REDACTED] in Brooklyn, New York. It is noted that the record does not reflect that the director's requests and notice to deny were returned to the Service as undeliverable.

It is further noted that the record reflects that the applicant had indicated on a subsequent annual TPS registration dated June 14, 2000, that she had moved to [REDACTED] in Brooklyn, New York, after the issuance of the notice to deny her application dated May 17, 2000. Therefore, it appears that the director properly notified the applicant at her last known address in accordance with the record of proceedings.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish her qualifying continuous physical presence and continuous residence during the requisite time periods. 8 C.F.R. § 244.2(b) and (c). Therefore, the application will also be denied for these reasons.

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.