



U.S. Citizenship  
and Immigration  
Services

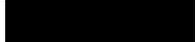
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FILE:



OFFICE: California Service Center

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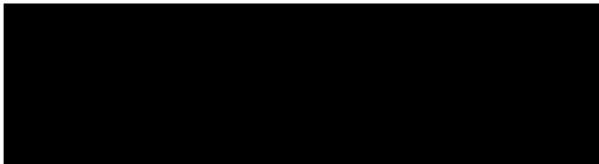
Applicant:



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 on appeal. The appeal will be dismissed.

The applicant claims to be a native and 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 director denied the application because the applicant failed to establish she was eligible for late registration.

On appeal, counsel argues that the applicant qualifies for late registration under TPS because she believed she had an application for change of status pending and subsequently filed within 60 days of the notice from the Department of Homeland Security (DHS) that she did not have this case pending. Counsel further argues that the Form I-130, Petition for Alien Relative, filed by her common-law spouse constitutes an application to change her status and, therefore, she has met one of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). The applicant also submits an affidavit and admits that she failed to register during the initial registration period because she did not have any money to pay the fees.

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 continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999. The initial registration period for Honduras was from January 5, 1999 through August 20, 1999. The record reveals that the applicant filed her initial application with Citizenship and Immigration Services (CIS) on February 11, 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).

On February 14, 2006, the Service notified the applicant of its intent to deny her TPS application and requested evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant submitted her response to this request on March 9, 2006.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on May 5, 2006 because she failed to prove her eligibility for late initial filing of her TPS.

On appeal, counsel argues that the applicant qualifies for late registration under TPS because she believed she had an application for change of status pending and subsequently filed within 60 days of the notice from the DHS that she did not have this case pending. Counsel further argues that the Form I-130, Petition for Alien Relative, filed by her common-law spouse constitutes an application to change her status and, therefore, she has met one of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). The applicant also submits an affidavit and admits that she failed to register during the initial registration period because she did not have any money to pay the fees.

Counsel's argument is not supported by any legal authority. She failed to cite any statute, regulation or case law to support her claim. On the contrary, filing a Form I-130 petition is a separate procedure that could possibly lead to, but does not constitute an application for adjustment of status to permanent resident.

Counsel's argument is also fundamentally flawed because it ignores an essential element of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2) that such application be pending at the time of the initial registration period. The Form I-130 petition was signed by the petitioner on April 27, 2001 and received by the Texas Service Center on May 7, 2001. The initial registration period for Honduras was from January 5, 1999 through August 20, 1999. Therefore, the Form I-130 petition was not pending during the initial registration period.

The applicant has submitted evidence with her initial I-821 application in an attempt to establish her qualifying residence and physical presence in the United States. However, this evidence does not establish that she met those requirements. The applicant has not submitted any evidence to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS 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.