



U.S. Citizenship
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APR 25 2007
Date:

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER
[WAC 05 098 75375- as it relates to SRC 01 237 55446]

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:

[REDACTED]

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.

Cindy N. Momen
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 on July 5, 2001 under U.S. Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS) receipt number SRC 01 237 55446. The Director, Texas Service Center, denied that application on October 7, 2002, because the applicant failed to establish her eligibility to file for late initial registration.

There is evidence in the record to indicate that the applicant attempted to file an appeal, but that the appeal was rejected. The applicant was then sent a note from the Texas Service Center indicating, "Your motion was not denied."

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 6, 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.

On appeal, counsel for the applicant states that the applicant is eligible to file for late initial registration. The applicant also submits evidence in an attempt to establish her eligibility for late initial registration.

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 who is a national of a foreign state as 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) (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 6, 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 appeal, counsel for the applicant states that the applicant is eligible for late initial registration because she is married to a TPS-eligible alien. In support of this claim, the applicant submits copies of her marriage certificate and her husband's employment authorization cards. Furthermore, a check of her husband's file under alien

registration number A94 264 304 indicates that he was approved for TPS. This establishes that the applicant is married to a TPS-eligible alien, and is therefore eligible for late initial registration.

However, while CIS regulations may allow spouses of TPS beneficiaries to file their applications after the initial registration period had closed; these regulations do not relax the requirements for eligibility for TPS. The applicant has provided insufficient evidence to establish her qualifying continuous residence since December 30, 1998 and continuous physical presence from January 15, 1999 to the filing date of the TPS application.

It is noted that a Federal Bureau of Investigation fingerprint results report indicates that the applicant was arrested by the Metro-Dade, Florida, Police Department on October 30, 1991, for "Shoplifting." The final disposition for this arrest is not included in the record, nor were the final court dispositions requested as provided. It is also noted that the applicant has failed to declare on her applications that she has ever been arrested. CIS must address this arrest in any future proceedings.

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.