

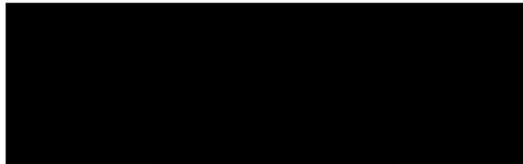
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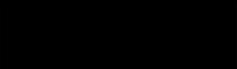
U.S. Citizenship
and Immigration
Services

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FILE:



[EAC 06 252 78365]

OFFICE: Vermont Service Center

DATE: AUG 27 2007

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC). It is now on appeal before the Administrative Appeals Office (AAO). 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 director denied the application on the grounds that the applicant failed to establish that she was eligible for late TPS registration, had continuously resided in the United States since December 30, 1998, and was continuously physically present in the United States from January 5, 1999, to the date her TPS application was filed, and failed to submit the final court disposition of a criminal charge against her.

On appeal the applicant submits some additional documentation.

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 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.

The phrase continuously physically present, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The phrase continuously resided, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Honduran nationals applying for TPS must demonstrate continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record shows that the applicant filed her initial Form I-821, Application for Temporary Protected Status, on May 29, 2006 – nearly seven years after the close of the initial registration period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she met at least one of the conditions 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 Citizenship and Immigration Services (CIS). *See* 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. *See* 8 C.F.R. § 244.9(b).

On September 29, 2006, the director requested the applicant – who claims to have entered the United States without inspection in January 1996 – to submit evidence that she was eligible for late registration and met the continuous residence and continuous physical presence requirements for TPS applicants from Honduras, as well as the final court disposition of an arrest on November 12, 2002, by the Police Department of Montclair, California, on a charge of petty theft. The applicant did not respond to the request.

On January 5, 2007, the director denied the application on the grounds that: (1) the applicant failed to establish her eligibility for late TPS registration under any of the criteria enumerated at 8 C.F.R. § 244.2(f)(2); (2) the applicant failed to establish that she had continuously resided in the United States since December 30, 1998, in accordance with section 244(c)(1)(A)(ii) of the Act; (3) the applicant failed to establish that she had been continuously physically present in the United States from January 5, 1999, to the date of her filing for TPS, in accordance with section 244(c)(1)(A)(i) of the Act; and (4) the applicant failed to provide the final court disposition of her arrest for petty theft.

On appeal, the applicant submits additional evidence of her residence and physical presence in the United States – including photocopies of the birth certificates of two children the applicant bore in the State of California on October 4, 1999, and November 8, 2006; three earnings statements from her employer, Target, Inc., for pay periods in March, April-May, and November 1998; the applicant's Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, for the calendar year 1998; her federal tax return for the calendar year 1998; and letters from two acquaintances in Pomona, California, who state that they have known the applicant in the United States since 1996 and 1998, respectively. Together with other documentation previously submitted with her TPS application – including photocopies of a California Identification Card issued to the applicant on April 11, 2002; an adult education card issued to the applicant by the Pomona Unified School District on April 15, 2004; and a State of California Benefits Identification Card issued to the applicant on March 14, 2006 – the AAO concludes that the evidence of record is sufficient to establish the applicant's continuous physical presence in the United States from January 5, 1999, to the date her TPS application was filed, and her continuous residence in the United States since December 30, 1998, as required for TPS applicants from Honduras in accordance with section 244(c)(1)(A)(i) and (ii) of the Act and 8 C.F.R. § 244.2(b) and (c). These grounds for denial have therefore been overcome.

On appeal the applicant also submitted documentation from the Superior Court of California, County of San Bernardino, of the final disposition of her arrest for petty theft. That document states that the applicant was convicted of a misdemeanor under section 490.5(A) of the California Penal Code on November 25, 2002. Later, on December 18, 2006, the conviction was set aside, a plea of not guilty was entered, and the case was dismissed pursuant to section 1203.4 of the California Penal Code. For immigration purposes, the original conviction stands. Nevertheless, as the court document indicates that the applicant was convicted of only one misdemeanor, she is not ineligible for TPS under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a), which provide that an alien convicted of any felony or two or more misdemeanors committed in the United States is ineligible for TPS. Accordingly, this ground for denial has also been overcome.

However, there is still no evidence in the record that the applicant – whose TPS application was filed nearly seven years after the end of the initial registration period for Honduran nationals on August 20, 1999 – is eligible for late registration under any of the criteria enumerated at 8 C.F.R. § 244.2(f)(2). Accordingly, the director's denial of the application will be affirmed on this ground.

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 that burden.

ORDER: The appeal is dismissed.