



U.S. Citizenship
and Immigration
Services

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MI

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: AUG 27 2007

[WAC 05 106 70289]

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.

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 director determined that the applicant failed to establish she: 1) had continuously resided in the United States since December 30, 1998; 2) had been continuously physically present in the United States since January 5, 1999; and 3) was eligible for late registration. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the applicant timely responded to the request for evidence and is eligible for is eligible for TPS.

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)
 - (1) Registers for TPS 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.

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.

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.

Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present since January 5, 1999. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until January 5, 2009, upon the applicant's re-registration during the requisite period.

The initial registration period for Hondurans was from January 5, 1999 to August 20, 1999. The record shows that the applicant filed this application on January 14, 2005

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). 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 first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding confirms that the applicant filed her application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from January 5, 1999 through August 20, 1999, she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

On February 5, 2006, the applicant was provided the opportunity to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing her nationality and identity, her continuous residence in the United States since December 30, 1998 and her continuous physical presence in the United States from January 5, 1999 to the date of filing the application. The director determined that the applicant failed to respond to the notice. Therefore, the director denied the application.

On appeal, counsel for the applicant states that the applicant timely responded to the request for evidence, and is eligible for TPS as the child of an alien currently eligible for TPS. According to counsel, the applicant is the victim of ineffective assistance of previous counsel, and but for that, would have provided all of the required information with her initial application. However, CIS is not responsible for the action or inaction of the applicant's representative. The applicant also submits evidence to indicate that she did respond to the request for additional evidence. Therefore, that evidence will be examined in this proceeding. CIS regulations allow "children" of TPS beneficiaries to file their applications after the initial registration period. Section 101(b)(1) of the Act defines "child" as an unmarried person less than twenty-one years of age. During the initial registration period, the applicant met this statutory definition. However, the applicant has submitted a copy of her marriage certificate, which shows that it was issued on April 9, 2002. The record shows that the applicant was actually married on April 12, 2002. Consequently, in order to obtain TPS as the child of a TPS-eligible alien, the applicant was required to submit her initial TPS application within 60 days of the termination of that status when she was married on April 12, 2002. In this case, the 60 day period expired on June 13, 2002. The applicant did not submit her application until January 14, 2005, more than two and a half years after the 60-day period immediately following the expiration or termination of the condition rendering her eligible for late initial registration. The applicant also submits evidence in an attempt to establish her continuous residence and physical presence in the United States during the qualifying period. However, this does not mitigate the applicant's failure to file her TPS application within the initial registration period. 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 conclusion that the applicant failed to establish her eligibility for late registration will be affirmed.

The second and third issues in this proceeding are whether the applicant has established her continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States since January 5, 1999.

As stated above, the applicant was requested on February 5, 2006, to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. Contrary to the director's contention, in response, the applicant submitted the following documentation:

1. A copy of a statement from the applicant, a copy of her State of Texas Identification Card with an expiration date of May 7, 2011, a copy of her birth certificate with English translation, a copy of her marriage license, and a copy of her immunization record.
2. Copies of a statement from [REDACTED] the applicant's mother and a copy of her last Will & Testament.
3. Copies of various documents to establish the TPS status of the applicant's mother.
4. Copies of Greyhound Lines bus tickets issued on October 11, 1991.
5. Copies of various educational certificates issued on June 3, 1992, May 17, 1993, June 3, 1993, June 4, 1993, May 30, 1994, May 31, 1994, December 16, 1994, May 26, 1995, May 27, 1995, May 16, 1997, copies of the applicant's school records for 1992-1993, 1993-1994, a notice of Progress dated September 15, 1995, report cards for school year 1996-1997, and 2001, a copy of a class photograph dated 1993-1994, a copy of a High School Diploma issued on June 2, 2001, a letter from [REDACTED]

dated May 31, 2001, achievement test scores for dates May 10, 1995, and September 27, 1995, class schedules from dated May 9, 2003, May 28, 2003, and an unofficial transcript from College System for Spring 2001, and Spring 2002.

6. Copies of tax documents for 2000, 2001, 2002, and 2003.
7. Statements from Page Parkes Center of Modeling and Acting dated September 27, 2001, and
8. Copies of documents from dated August 18, 2002, from dated August 18, 2002, a hand-written receipt for an office visit to an unknown office, a Audiology Department report dated September 17, 2004, a bill from dated August 3, 2005, and an itemized statement from dated November 30, 2005.
9. Copies of a a Second Lien Note, a Second Lien Deed of Trust, and a signed on February 13, 2003.
10. Copies of a birthday party invitation for the applicant's son dated August 16, 2003, a Certificate of Baptism for her son dated August 17, 2002, and a copy of his immunization record.
11. Copies of receipts dated December 30, 2003, August 1, 2005,
12. Copies of a Special Supplemental vouchers dated July 8, 2003, July 9, 2003, and August 8, 2003.
13. Copies of History with last posting date of April 8, 2004
14. Copies of pay stubs dated June 5, 2006, June 20, 2006, July 5, 2006, and July 15, 2006.
15. Copies of a letter from dated August 14, 2004, a dated January 10, 2005, and a letter from Sprint dated November 23, 2005
16. Copies of statements from, dated August 18, 2004, and October 5, 2004, payment statements dated of November 26, 2004, December 27, 2004, January 27, 2005, August 27, 2005, September 27, 2005a Texas Homeowner Policy Form for the policy period from October 15, 2004, to October 15, 2005, letters from dated October 28, 2004, and December 13, 2005, a letter from Express Note Buyer dated December 13, 2004, a Policy for the policy period from October 15, 2005 to October 15, 2006a letter from dated June 22, 2006, account statements from for the period from

January 14, 2006 through February 13, 2006, from February 4, 2006 through March 13, 2006, from March 14, 2006 through April 13, 2006, from April 14, 2006 through May 11, 2006, and from May 12, 2006 through June 13, 2006.

17. Copies of a [REDACTED] Notice dated November 2, 2004, a Medicaid Action Notice dated October 1, 2005, a letter from Texas Star Program dated October 27, 2005, and a Texas Star Program Medicaid Identification dated June 20, 2006

These documents establish that the applicant continuously resided in the United States from December 30, 1998 and that she was continuously physically present from January 5, 1999 to the filing date of the TPS application. Consequently, the applicant has submitted sufficient evidence to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c).

Therefore, this basis for the director's decision will be withdrawn.

However, as discussed above, the applicant remains ineligible for Temporary Protected Status, because she has not established eligibility for late registration as described in 8 C.F.R. § 1 244.2(f)(2)

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.