



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE:

DEC 28 2007

[EAC 03 211 51873]

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, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The case will be remanded to the director for further action.

The applicant is 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 had failed to establish that she was eligible for late registration.

On appeal, counsel for the applicant submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state 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 § 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 condition described in paragraph (f)(2) of this section.

The term *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.

The term *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.

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 time period.

The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The record shows that the applicant filed her TPS application on July 11, 2003.

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 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).

In a notice of intent to deny dated September 8, 2003, the applicant was requested 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 qualifying continuous residence in the United States since December 30, 1998, and continuous physical presence from January 5, 1999, to the date of filing the application. In response, counsel asserted that the applicant qualified for late initial registration because she had an asylum application, removal proceeding, and an application for adjustment of status to lawful permanent resident pending during the initial registration period for Hondurans. Counsel stated that the applicant married [REDACTED], a United States citizen [on May 11, 1996], and filed a Form I-485, Application to Register Lawful Permanent Residence and Adjust Status, with the New York district office on June 10, 1996. Counsel submitted evidence to establish the applicant's continuous residence and continuous physical presence in the United States. He also submitted the following:

1. A photocopy of a notice ordering the applicant to appear at the Immigration Court, New York, New York, for a removal hearing on February 6, 1996.
2. A photocopy of an Employment Authorization Card (EAD) issued to the applicant on June 27, 2001, based on a pending asylum application.

3. A photocopy of a Form EOIR-36, Order of the Immigration Judge, dated June 21, 1996, New York, New York, ordering the applicant deported to Honduras *in absentia* because she failed to appear for her removal hearing.
4. A photocopy of a marriage certificate indicating that the applicant and [REDACTED] a United States citizen, were married in Islip, New York, on May 11, 1996.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on September 28, 2004. The director maintained that it appears the applicant was trying to show that she was eligible to take advantage of the late initial filing provisions of TPS regulations as the spouse of an alien currently eligible to be a TPS registrant; however, since her husband was born in Puerto Rico and is a United States citizen, he is not currently eligible to be a TPS registrant, and the applicant cannot use this condition.

On appeal, counsel states that the applicant was not applying for late initial registration as the spouse of a United States citizen, but rather because she had a pending application for adjustment of status to lawful permanent residence during the initial registration period. Counsel submits a copy of a Puerto Rican birth certificate indicating that her husband, [REDACTED] was born in Yauco, Puerto Rico, on December 14, 1955.

The record indicates that the applicant filed a Form I-589, Request for Asylum in the United States, on October 3, 1994. That application was denied by the New York Asylum Office Director on August 22, 1995, and the applicant was referred for a removal hearing before an Immigration Judge (IJ). On June 21, 1996, in New York, New York, the IJ ordered the applicant removed to Honduras *in absentia*. More than five years later, on January 11, 2002, the applicant filed a motion to reopen removal proceedings. On March 8, 2002, the IJ denied the motion because it was untimely filed. The applicant appealed the IJ's decision to the Board of Immigration Appeals (BIA). On April 30, 2003, the BIA dismissed the applicant's appeal.

The record further indicates that the applicant married [REDACTED] a United States citizen, on May 11, 1996. On June 10, 1996, [REDACTED] filed Form I-130, Petition for Alien Relative, on behalf of the applicant. On the same day, June 10, 1996, the applicant filed Form I-485, Application to Register Permanent Residence or Adjust Status. A Form I-212, Application for Permission to Reapply for Admission into the United States After Removal or Deportation, was also filed by the applicant on July 17, 1996. There is no indication in the record that any of these applications have been adjudicated to date.

The applicant does not qualify for late initial registration based on her asylum application because the asylum application was denied on August 22, 1995, and the IJ had ordered the applicant removed from the United States on June 21, 1996, prior to the initial registration period for Hondurans.

However, the applicant does qualify for late initial registration under 8 C.F.R. § 244.2(f)(2)(ii) because she had (and continues to have) a pending adjustment of status application during the initial registration period for Honduras. Therefore, the applicant has overcome this finding of the director.

It is noted, however, that the Department of Homeland Security, FD258 Tracking System, and the records of the Federal Bureau of Investigation contain no record on file that the applicant was ever fingerprinted. Therefore, the case will be remanded, and the director shall schedule an appointment for the applicant to appear for fingerprinting. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The case is remanded to the director for further action consistent with the above.