



U.S. Citizenship  
and Immigration  
Services

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*ML*

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: JUL 02 2007

[SRC 03 163 53800 as it relates to WAC 05 111 79965]

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 M. Gomez for*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** An initial application was denied by the Director, Texas Service Center (TSC). An appeal that was filed late was treated as a motion and denied by the TSC director. The re-registration application was then denied by the Director, California Service Center (CSC). That re-registration denial was appealed and the appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a subsequent motion to reopen. The initial application will be reopened, *sua sponte*, by the Chief, AAO. The motion to reopen will be granted and the appeal will be sustained.

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 record reveals that the applicant filed an initial TPS application on June 4, 2003, under receipt number SRC 03 163 53800. The Texas Service Center (TSC) director denied that application on November 12, 2003, due to abandonment because the applicant failed to appear for her scheduled fingerprint appointment. The applicant, through counsel, filed a motion to reopen with the TSC director which was dismissed on January 9, 2004, because it was filed after the prescribed 33-day timeframe. In a letter dated February 11, 2004, counsel stated that the delay in filing the motion was beyond the control of the applicant due her unfortunate medical condition at that time. Further, counsel provided a letter dated January 29, 2004, from the applicant's attending physician addressing the applicant's medical circumstance which delayed her filing of the motion.

The applicant filed the current Form I-821, Application for Temporary Protected Status, as a re-registration application on January 19, 2005. On August 29, 2005, the CSC director denied the applicant's TPS re-registration because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On September 27, 2005, counsel filed an appeal which was dismissed by the Chief of the AAO on January 26, 2007. On February 22, 1997, counsel requested, without fee, a Service motion to reopen the decision of the AAO. That motion was rejected by the CSC director on February 26, 2007. On March 15, 2007, counsel re-submitted the motion which is now before the AAO.

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.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or 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 motion, counsel states that the decision dated January 26, 2007, indicated that the applicant had abandoned her initial TPS application because she failed to appear for her scheduled fingerprint appointment. Counsel further states that the applicant did not appear for her scheduled fingerprint appointment on July 8, 2003, because she did not receive the fingerprint appointment notification. In addition, counsel asserts that the decision did not address the issues presented and discussed in the legal brief. Counsel also states that the initial application was wrongfully denied by the TSC director based on the incorrect allegation that the applicant had received notification regarding her scheduled fingerprint appointment, when in fact, she had not.

A review of the record of proceedings reveals that the applicant was subsequently fingerprinted on two separate occasions, and the Federal Bureau of Investigations (FBI) fingerprint results reports dated March 27, 2005 and March 27, 2006, indicate no adverse information.

Also, a review of the record of proceedings reveals that the applicant was granted H-1B, temporary employee non-immigrant status, from 1997 through July 1, 2003. The applicant's initial TPS application was received by the TSC on May 21, 2003. As such, the applicant has established that she has met one of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Therefore, the applicant has satisfied the requirements under the late initial registration provisions.

The record also contains copies of CIS Approval Notices reflecting that the applicant was granted H-1B non-immigrant status from July 1, 1997 to July 01, 2000, and from July 2, 2000 to July 1, 2003. In addition, the record contains a copy of her Social Security Statement reflecting wages earned in the years: 1996, 1997, 1998 and 1999. Also, the record contains copies of the applicant's IRS (Internal Revenue Service), Form W-2, Wage and Tax Statements for 1997 and 1998, several bank accounts statements dated December 17, 1996 to March 17, 1997, as well as a letter dated January 29, 2004, from [REDACTED] stating that the applicant had been a patient of his since June 1996. The record also contains copies of her Honduran passports reflecting brief trips outside the United States since November 10, 1998 until March 5, 2003. Therefore, the applicant has provided sufficient evidence that she has established her qualifying continuous residence and continuous physical presence in the United States.

The record of proceedings contains sufficient evidence to establish the applicant's eligibility for TPS and does not reflect any grounds that would bar the applicant from receiving TPS. Therefore, the director's decision will be withdrawn and the initial application will be approved.

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 met this burden.

**ORDER:** The director's decision is withdrawn. The appeal is sustained and the applications are approved.