



U.S. Citizenship
and Immigration
Services

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JUL 13 2007

FILE: [REDACTED]
[EAC 04 211 51406]

Office: Vermont Service Center

Date:

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 (VSC), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant had failed to establish her eligibility for late TPS registration. The director also found that the applicant had failed to establish her qualifying continuous physical presence in the United States during the requisite periods.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant filed her initial application [SRC 02 100 54792] on February 6, 2002. On February 26, 2002, and on October 8, 2002, the Texas Service Center (TSC) director requested the applicant to submit evidence to establish her eligibility for TPS late registration. The TSC director also requested the applicant to submit evidence to establish her qualifying continuous residence and continuous physical presence in the United States. The TSC director denied the application on December 20, 2002, because the applicant failed to establish her eligibility for TPS late registration.

On December 22, 2003, the applicant, through counsel, filed a motion which was denied by the TSC director on February 10, 2004.

The applicant filed a re-registration TPS application on December 15, 2003, under receipt number EAC 04 055 51345. That application was denied by the VSC director on June 1, 2004, because her previous application was denied.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on July 6, 2004. On July 26, 2004, the VSC director requested the applicant to submit evidence to establish her eligibility for TPS late registration and her qualifying continuous physical presence in the United States from January 5, 1999, to the date of filing her application. The record did not contain a response from the applicant. Therefore, the VSC director denied this application on September 30, 2004, because the applicant failed to establish her eligibility for TPS late registration as well as her qualifying continuous physical presence in the United States.

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 designated by the Attorney General is eligible for TPS 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.

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.

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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until July 5, 2007, 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 reveals that the applicant filed the current application with Citizenship and Immigration Services (CIS), on July 6, 2004.

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 July 26, 2004, 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 also was requested to submit evidence establishing her qualifying continuous physical presence in the United States from January 5, 1999. The director determined that the record did not contain a response to the July 26, 2004, request; and therefore, denied the application on September 30, 2004.

On appeal, counsel asserts the applicant's claim of eligibility for TPS. Counsel also submits the following documentation in an attempt to establish the applicant's claim: a copy of her Honduran passport issued to her in New York on February 1, 2001; a copy of a letter dated June 25, 2004, from [REDACTED] stating that she was enrolled in Deer Park High School, Deer Park, New York, from April 3, 2000 to June 2004; a copy of an authorization for release of medical information signed on October 15, 2004; a copy of a letter dated October 15, 2004, from [REDACTED] Medical Records Clerk, reflecting that the applicant was a patient at the Martin Luther King Jr. Community Health Center from December 2, 1999 to February 22, 2000, and a listing of the applicant's appointments from February 2, 2002 to July 6, 2004; copies of her Honduran birth certificate along with an English translation; and a copy of an Approval Notice from the Service dated July 6, 2000, regarding the approval of her mother's TPS application.

A review of the record of the applicant's mother, [REDACTED], reflects that she was granted TPS on July 5, 2000; therefore, her mother is an eligible TPS registrant. Furthermore, a review of the record of the applicant's father, [REDACTED] reflects that he was granted TPS on December 13, 1999. 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). Consequently, the director's decision to deny the application on this ground will be withdrawn.

The second issue in this proceeding is whether the applicant has established her continuous physical presence in the United States since January 5, 1999.

Counsel, on appeal, submits evidence that post-dates the beginning of the requisite time periods for continuous physical presence in the United States by nearly 12 months. In addition, the applicant claims to have entered the United States in December 1998; however, a review of her mother's record does not reflect that the applicant was listed on her initial TPS application filed on March 16, 1999. In addition, a review of her father's record also does not reflect that the applicant was listed on his initial TPS application filed on February 5, 1999.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the applicant has failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application for TPS on this ground will be affirmed.

Beyond the decision of the director, it is noted that the applicant has provided insufficient evidence to establish her qualifying continuous residence during the requisite time periods. 8 C.F.R. § 244.2(c). Therefore, the application must also be denied for this reason.

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 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 this burden.

ORDER: The appeal is dismissed.