



U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: JUN 12 2007

[WAC 05 309 70191]

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:



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.


for 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 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 because the applicant had failed to establish that she: (1) was eligible for late registration; and (2) had continuously resided in the United States since December 30, 1998, and had been continuously physically present from January 5, 1999, to the date of filing the application.

On appeal, counsel submits a statement and additional evidence, including evidence previously furnished and contained in the record of proceeding.

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 and Nicaraguans 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 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 shows that the applicant filed her TPS application on August 5, 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 she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

In a Notice of Intent to Deny (NOID) dated June 6, 2006, 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 to establish 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. The director noted that the evidence furnished in response to the NOID was insufficient to establish eligibility for late registration and to establish residence and physical presence during the qualifying period. The director, therefore, denied the application on August 3, 2006.

On appeal, counsel states that the applicant asserts she had filed a late TPS application due to circumstances beyond her control, and that the applicant believes she had the required physical presence to qualify for TPS. She submits additional evidence in an attempt to establish residence and physical presence in the United States.

The evidence, however, does not mitigate the applicant's failure to file her Application for Temporary Protected Status 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 decision to deny the application for this reason will be affirmed.

The next issue in this proceeding is whether the applicant has established 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 a Notice of Intent to Deny (NOID) dated June 6, 2006, the applicant was requested to submit evidence to establish her continuous residence and continuous physical presence during the requisite periods. The director noted that the evidence furnished in response to the NOID was insufficient to establish eligibility and denied the application on August 3, 2006.

On appeal, counsel states that the applicant believes she had the required physical presence to qualify for TPS. She submits the following:

1. A statement dated June 29, 2006, from [REDACTED] indicating that the applicant resided with her from December 1997 until July 1998, and that she paid a monthly rent of \$200. [REDACTED] neither listed the address where she and the applicant resided during that period, nor was the statement notarized and attested to under penalty of perjury. Also submitted is a statement dated June 29, 2006, from [REDACTED] indicating that the applicant was under her employment full time from January 3, 1998 to July 6, 1998, holding the position considered as [REDACTED] to his son, and that her monthly salary was \$600 per month. [REDACTED] included copies of generic receipts dated during that period. [REDACTED] statement also was not attested to under penalty of perjury. Additionally, the time periods for these two letters are prior to the requisite periods required to establish residence and physical presence.
2. Statements from eight individuals confirming their knowledge and acquaintance of the applicant during the requisite periods. It is noted, however, that each of these statements was stamped with the official seal of a notary public, [REDACTED]. There is no evidence that [REDACTED] had seen each of these eight individuals and that they were sworn to under penalty of perjury by [REDACTED].
3. Copies of various receipts dated from 2002 to 2006.

Regulations at 8 C.F.R. §244.9(a)(2) do not expressly provide that personal affidavits on an applicant's behalf are sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. Moreover, the affidavits provided were not supported by any other corroborative evidence. The applicant has failed to provide sufficient evidence to establish residence and physical presence since December 30, 1998 to 2002.

The applicant has failed to establish that she has met the criteria for continuous residence since December 30, 1998, and continuous physical presence since January 5, 1999, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the TPS application on these grounds will also be affirmed.

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 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.