



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUN 18 2007

[WAC 06 093 52170]

IN RE:

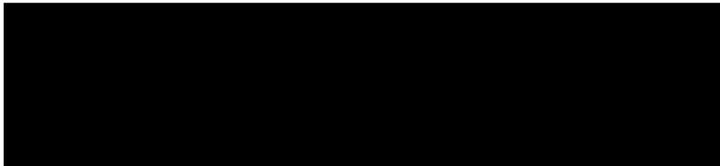
Applicant:



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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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

On appeal, counsel for the applicant states that the applicant should be granted TPS because of her eligibility as a late registrant.

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.

The term *continuously physically present*, as used in 8 C.F.R. § 244.1, means actual physical presence in the United States since January 5, 1999. Any departure, not authorized by CIS, including any brief, casual, and innocent departure, shall be deemed to break an alien's continuous physical presence.

The term *continuously resided* as used in 8 C.F.R. § 244.1 means residing in the United States for the entire period specified in the regulations and since December 30, 1998. 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 July 5, 2007, 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 25, 2006.

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 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 March 9, 2001 through September 9, 2002, 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 July 13, 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 applicant, in response, provided proof of her nationality and identity, and a copy of her marriage certificate indicating that she was married on December 23, 1992. The applicant also provided a copy of a Form I-94, Departure Record, indicating that she was paroled into the United States until December 28, 2001. She did not submit evidence to establish continuous residence and continuous physical presence during the requisite periods. Therefore, the director denied the application.

On appeal, counsel for the applicant states that the applicant should be approved for TPS based on her eligibility as a late registrant. The applicant also states that she would send a brief and/or evidence within 30 days. To date, there has been no further correspondence from the applicant or counsel. Therefore, the record must be considered

complete.

Counsel for the applicant asserts that the applicant is eligible for late initial registration because the applicant is married to a TPS-eligible alien. While CIS regulations may allow spouses of TPS beneficiaries to file their applications after the initial registration period had closed; these regulations do not relax the requirements for eligibility for TPS. The applicant is still required to meet the residence and physical presence requirements as provided in 8 C.F.R. §§ 244.2(b) and (c). The applicant indicated on her TPS application that she entered the United States on August 26, 2001. By her own admission, the applicant arrived in the United States subsequent to the eligibility period. Therefore, she cannot satisfy the residence and physical requirements described in 8 C.F.R. §§ 244.2(b) and (c).

The 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 July 13, 2006 to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted a copy of a Form I-94, Departure Record.

The director concluded that the applicant had failed to establish her qualifying residence and physical presence in the United States during the requisite periods and denied the application. On appeal, the applicant failed to provide any additional evidence.

As discussed above, the applicant, by her own admission, entered the United States subsequent to the eligibility period. Therefore, the applicant cannot establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). It is noted that the applicant's husband, on his initial TPS application submitted on July 9, 1999, indicated that the applicant was in Honduras at that time. This is further evidence that the applicant has not met the continuous residence and physical presence criteria. Consequently, the director's decision to deny the application for temporary protected status on these grounds will be affirmed.

It is noted that a Federal Bureau of Investigation fingerprint results report indicates that the United States Immigration & Naturalization Service arrested the applicant for "Oral False Claim to U.S. Citizenship" on August 25, 2001. The final disposition for this arrest is not included in the record, nor were the final court dispositions requested to be provided. It is also noted that the applicant has failed to declare on her applications that she has ever been arrested. CIS must address these arrests in any future proceedings.

Beyond the decision of the director, it also is noted that, as discussed above, the applicant is not eligible for late registration. Therefore, the application must be denied on this basis as well.

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.