



U.S. Citizenship
and Immigration
Services

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FILE:



Office: California Service Center

Date:

MAR 01 2007

[WAC 05 152 75126]

IN RE:

Applicant:



PETITION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254.

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is stated to be 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 a late initial TPS application on March 1, 2005, under CIS receipt number WAC 05 152 75126. The director denied that application on May 13, 2006, because the applicant failed to establish her continuous residence since December 30, 1998, her continuous physical presence in the United States from January 5, 1999, to the date of filing, eligibility for late initial registration, and her nationality and identity.

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.

- (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.

Continuously physically present 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.

Continuously resided 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.

Brief, casual, and innocent absence means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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 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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse/child of an alien currently eligible to be a TPS registrant, and he had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

With her initial application, the applicant submitted: two birth certificates for her children born on February 19, 2003, and October 30, 2004, and two Social Security cards for the children; her Honduran birth certificate in Spanish, with an English translation; and a Belmont Community Adult School identification card which expired in June 2004.

On appeal, in an attempt to establish her continuous residence and her continuous physical presence, the applicant states that she has been in the United States since 2002, and she is seeking the opportunity to be legal in the United States. With the appeal, the applicant submits the following additional documents:

- 1) Two letters from [REDACTED], dated June 7, 2006, and March 20, 2005;
- 2) The applicant's Honduran birth certificate in Spanish, with an English translation;
- 3) Five Western Union money transfer receipts dated in 2005 and 2006;
- 4) Various agreements, receipts, and invoices, for services, dated in 2005 and 2006;
- 5) Three untranslated letters, in Spanish, dated November 10, 2005, and September 21, 2005;
- 6) A page of an apartment lease, dated May 8, 2005;
- 7) A Social Security letter, dated October 30, 2004; and
- 8) Various medical-related documents dated in 2003, and 2004.

The applicant did not submit sufficient evidence to establish that she had continuously resided in the United States since December 30, 1998, and that she had been continuously physically present since January 5, 1999. It is noted that on her TPS application, the applicant indicates that she did not enter the United States until November 1, 2002. The director concluded that the applicant had not met the date of entry, continuous residence and continuous physical presence criteria for TPS. Consequently, the director's conclusion that the applicant has not met the continuous residence and the continuous physical presence criteria for TPS is affirmed.

In addition, the applicant is not eligible for late initial registration. As stated above, the record establishes that the applicant entered the United States on November 1, 2002, after the initial registration period for Hondurans. 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 temporary protected status on this ground will be affirmed.

Furthermore, as determined by the director, the applicant has not submitted sufficient evidence to establish her nationality and identity. The applicant has furnished a copy of a birth certificate and English translation; however, she has not submitted a national identity document from her country bearing a photograph and or/fingerprint. The birth certificate alone is insufficient to establish the applicant's identity and nationality under the provision of 8 C.F.R. § 244.9(a)(1). Therefore, the director's decision to deny the application for this reason, must 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.