



U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER Date: **MAY 09 2007**
consolidated herein]

[SRC 04 029 53398]

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:

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, Texas Service Center, 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 because the applicant failed to establish that she was eligible for late registration. The director also determined that the application failed to establish her continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant submits a statement and additional evidence.

The record reveals that the applicant filed an earlier application for TPS [SRC 01 251 57152], on August 2, 2001. That application was denied on November 20, 2002, for failure to respond to a request for evidence to establish her eligibility for TPS. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant's initial August 2, 2001, TPS application was denied due to abandonment in error. The record contains the applicant's response to the director's request, date stamped as received by the Texas Service Center on November 18, 2002, prior to the issuance of the director's denial decision. In addition, the decision letter indicates that it was mailed to an incorrect address. While the initial TPS application was denied due to abandonment in error, that error, nevertheless, does not affect the status of this later application because the original August 2, 2001, application was also filed outside of the initial registration period that for Hondurans ended on August 20, 1999.

The applicant filed this subsequent Form I-821, Application for Temporary Protected Status, on November 7, 2003. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

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 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.

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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, 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 time period.

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed this TPS application with Citizenship and Immigration Services (CIS), on November 7, 2003.

The burden of proof is upon the applicant to establish that 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 her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from 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 proceedings 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 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 late initial registration. 8 C.F.R. § 244.2(g).

On February 24, 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 was also requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. In addition, the applicant was requested to submit photo identification, such as a passport, national identity document, or State-issued identification card, and a certified translation of her birth certificate.

The applicant, in response, stated that she entered the United States on August 14, 1999, at McAllen, Texas, with her two minor children, in order to join her husband. She stated that since her arrival in the United States in August 1999, she has not left the country. She stated that she did not tell the individual who prepared her forms that she had entered the United States in 1998, and that the preparer must have made a mistake in indicating her date of entry as August 13, 1998. She believes that she qualifies for TPS as the spouse of a TPS registrant. The applicant also provided photocopies of the following documentation: her State of Florida driver's license issued on February 14, 2003; her Honduran passport issued on January 20, 2000, by the Consulate General, Miami, Florida; her Honduran birth certificate, with English translation; a Dade County, Florida, Certificate of Marriage indicating her marriage to [REDACTED] in Miami, Florida, on January 25, 2000; receipt notices for the applicant and her husband; sworn statements from two individuals attesting to the applicant's residence in the United States since August 1999; Internal Revenue Service (IRS) forms for the applicant and her husband for 2001 through 2003, and for her husband in 2000.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on May 5, 2004. The director noted that the applicant's marriage to a TPS registrant in January 25, 2000, occurred after the initial registration period, and therefore, did not make her eligible for late initial registration.

On appeal, the applicant states that she and her husband have lived together in a common-law relationship since March 4, 1990. She states that the proof of this relationship is her children born in 1995 and 1997 in Honduras. She states that her husband decided they should marry in this country in order to legitimize their children. In support of the appeal, the applicant submits photocopies of the following documentation: the Employment Authorization Documents (EAD) for her husband and two children, valid under Category A12; additional copies of her marriage certificate and birth certificate with English translation; a copy of her EAD card for the period of February 21, 2002 through July 5, 2002 under Category C19 [SRC 01 251 57193]; and, Honduran birth certificates, with English translation, for the applicant's husband and her two children indicating the applicant and her husband as the parents of the children.

The applicant claims on appeal to have been the common-law spouse of [REDACTED] during the initial registration period for Hondurans. The applicant submits a copy of Mr. [REDACTED]'s (EAD), valid under Category A12. However, it is noted that at the time that the applicant was apprehended by the United States Border Patrol in 1999, that she stated, under oath, that she was going to her brother-in-law's residence, and that her "husband," the very same individual that she later married in the United States in 2000, was deceased.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to explain why she previously certified under oath that Mr. [REDACTED] was deceased if she considered herself to have been in a common-law marriage during this time period. Thus, the applicant's current claim to have been a common-law spouse of a TPS recipient during the initial registration period is without merit.

Further, the state of Florida, where applicant resides, does not recognize common law marriages entered into after 1968. FLA. STAT. ANN. section 741.211 (2002).

Therefore, the applicant's attestation of informal marriage cannot be accepted for purposes of this application. The applicant has not submitted sufficient 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.

The second issue in this proceeding is 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 director determined that the applicant failed to submit sufficient evidence establishing her qualifying continuous residence and continuous physical presence in the United States, and denied the application on May 5, 2004. The director noted that the applicant's date of entry given on her Form I-821, Application for Temporary Protected Status, differed from the date of entry as stated in her supporting evidence and evidence of record relating to her immigration proceedings.

On appeal, the applicant states “that [she] entered [the United States] on 8/14/1999 and not prior [to] 12/98.” She reiterates that the person who prepared her application made an error on the Form I-821. In support of the appeal she submits the evidence identified above.

The applicant has failed to submit evidence to establish her qualifying continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States since January 5, 1999. The applicant asserts her date of entry into the United States as August 14, 1999, several months after the required periods as designated for nationals of Honduras. The applicant has, therefore, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director’s decision to deny the application on these grounds will also be affirmed.

It is noted that the record contains a Warrant of Removal/Deportation issued at Harlingen, Texas, on March 8, 2000, based upon an *in absentia* final order of removal dated March 3, 2000, issued by the Immigration Judge, Harlingen, Texas.

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.