



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: MAY 14 2007

[WAC 05 090 7773]

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

The applicant is a 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 her initial TPS application on June 10, 2003 under CIS receipt number SRC 03 177 56515. The Director, Texas Service Center, denied that application on December 9, 2003, because the applicant failed to establish her eligibility to file for late initial registration. There is nothing in the record to indicate that the applicant appealed the director's decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 29, 2004, and indicated that she was re-registering for TPS.

The director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, counsel for the applicant states that the applicant clearly established her qualifications for TPS.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

In this case, the applicant has not previously been granted TPS. Therefore, she is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

It is noted that the director's decision does not explore the possibility that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant may apply for TPS during the initial registration period, or:

- (f) (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 initial registration period for Hondurans was from January 5, 1999 to August 20, 1999. The record reveals that the applicant filed the current application with Citizenship and Immigration Services (CIS) on December 29, 2004.

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.

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 appeal, counsel for the applicant states that the director erred in denying the application because the applicant clearly established that she qualifies and meets all of the TPS requirements.

The applicant, however, has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Therefore, the application also must be denied for this reason.

Beyond the decision of director, it is noted the record contains a Form I-862, Notice to Appear, based on her illegal entry into the United States on April 3, 1999, at or near Brownsville, Texas. The applicant failed to appear at a subsequent scheduled hearing and was ordered deported *in absentia* on July 26, 1999. A Form I-166, Notice to Deportable Alien, was issued on December 21, 1999, ordering the applicant to appear at the Port Isabel Service Processing Center on January 21, 2000 for her departure to Honduras. The applicant failed to appear. On August 6, 2003, a Form I-220B, Order of Supervision, was issued instructing the applicant to appear at the Miami District Office every month. In addition, the record contains correspondence from the applicant's previous representative stating that the applicant had first entered the United States in 1997, but she "left for (6) weeks in 1999 and at the time of entering back in the U.S.A. she was caught in Brownsville, Texas." Based on the evidence in the record, the applicant cannot establish that she has met the continuous residence and continuous physical requirements for TPS. Consequently, the application will also be denied for these reasons.

It is noted that a Federal Bureau of Investigation Fingerprint Report indicates that on February 8, 2004, the applicant was arrested by the Miami Police Department for a Municipal Ordinance Violation, "Tobacco Products Sell Deliv Give Minor," "Resisting Officer," "Alcoholic Beverage Unlawful Solicitation," and five charges of "Alcoholic Beverage Sell Without a License." On September 9, 2004, the applicant was arrested by the Miami Police Department for "Alcoholic Beverages Establishment Mingling." The record does not contain the final disposition for these charges. The director must address these arrests in any future proceedings.

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.