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FILE:

OFFICE: CALIFORNIA SERVICE CENTER

DATE: MAY 21 2007

[WAC 05 131 77866]

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.

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 submit sufficient evidence to establish continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999.

On appeal, counsel asserts that the applicant had submitted sufficient evidence to warrant a favorable decision for late registration for TPS.

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 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 indicates that the applicant filed her initial TPS application on February 8, 2005.

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)

In a Notice of Intent to Deny (NOID) dated March 31, 2006, the applicant was requested to submit evidence to establish that she was eligible for late initial registration, and evidence to establish that she 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. The director listed the evidence furnished by the applicant in response to the NOID, and concluded that the evidence submitted was insufficient to establish eligibility for continuous residence and continuous physical presence, and that the applicant "did provide evidence to meet the requirements for a late TPS initial filing in accordance with 8 C.F.R. § 244.2." The director, therefore, denied the application on August 2, 2006.

It is noted, however, that the evidence furnished by the applicant in response to the director's NOID, in conjunction with the evidence previously furnished by the applicant and contained in the record of proceeding is sufficient to establish continuous residence and continuous physical presence as described in 8 C.F.R. § 244.2(b) and (c). Therefore, these findings of the director will be withdrawn.

However, the record, in this case, indicates that the director had erroneously found that the applicant had provided evidence to meet the requirements for late initial registration. The record of proceeding is devoid of any evidence to establish that the applicant has furnished 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); nor is there any evidence in the record to suggest that the

applicant appears to have met at least one of the provisions for late registration described in 8 C.F.R. § 244.2(f)(2). Counsel's assertion that the applicant had submitted sufficient evidence to warrant a favorable decision for late registration for TPS is without merit. The applicant neither addressed nor submitted any evidence, in response to the director's NOID and on appeal, to establish eligibility for late registration. Therefore, the finding of the director that the applicant provided evidence to meet the requirements for late initial registration will also be withdrawn, and the TPS application will be denied.

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.