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U.S. Citizenship
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Services

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FILE:



[WEC 05 153 76036]

Office: California Service Center

Date:

MAY 29 2007

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:

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 (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 a late initial TPS application on March 2, 2005, under CIS receipt number WAC 05 153 76036. The director denied the application on August 21, 2006, because the applicant failed to establish eligibility for late initial registration for TPS, her continuous residence and her continuous physical presence in the United States, and her nationality and identity. The director noted that the applicant failed to respond to a June 29, 2006 notice of intent to deny her TPS application.

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/she 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/she 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 TPS application, the applicant submitted an untranslated Honduran birth certificate [in Spanish].

On appeal, the applicant states that she applied late for TPS because she was under economic hardship during the initial registration period for Hondurans. With her appeal, in an attempt to establish her continuous residence and her continuous physical presence in the United States, and her nationality and identity, the applicant submits photocopies of:-

- Two pages of her Honduran passport, including the biographic page, issued in 2005;
- A Honduran photo identification card;
- A name search from the Miami-Dade Police Department, dated August 8, 2006, indicating no local record for the applicant;
- An untranslated letter [in Spanish], dated September 13, 2006;
- A letter from the Social Security Administration, dated April 10, 2006;
- An Employment Authorization Card which expired on July 5, 2006;
- Two ASC Appointment Notices, dated January 20, 2006, and July 25, 2006, respectively;
- Three CIS receipt notices, dated in 2006;
- Three reference letters from individuals stating that they have known the applicant since 1998; and,
- A Bank of America debit card; and,
- Various receipts, including money order receipts.

The first issue in this proceeding is whether the applicant has established eligibility for late initial registration for TPS.

The applicant 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). The evidence of record does not mitigate the applicant's failure to file her Form I-821, Application for Temporary Protected Status, within the initial registration period. Consequently, the director's decision to deny the application for this reason must be affirmed.

The next issue in this proceeding is whether the applicant has established the requisite continuous residence and continuous physical presence requirements.

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. The evidence of record consists primarily of documents issued in 2006, and generic receipts, which are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to establish the requisite continuous residence and physical presence requirement; however, no such evidence has been provided. The documents submitted do not serve to establish the applicant's eligibility for TPS. In addition, the applicant's passport appears to have been issued in Honduras on May 25, 2005.

The applicant has, therefore, not met the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status for these reasons must also be affirmed.

The next issue in this proceeding is whether the applicant has established her identity and her nationality.

The applicant has submitted sufficient evidence to establish her identity and nationality. The applicant has submitted her Honduran passport, her Honduran national photo identification card, and her Honduran birth certificate.¹ Therefore, the director's decision to deny the application for temporary protected status for this reason will be withdrawn.

¹ It is noted, however, that the applicant has not submitted an English translation of her birth certificate.

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.