



U.S. Citizenship
and Immigration
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FILE:



[EAC 02 243 51242]

OFFICE: Vermont Service Center

DATE: OCT 02 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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC). It is now on appeal before the Administrative Appeals Office (AAO). 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 director denied the application on the grounds that the applicant failed to establish that she had continuously resided in the United States since December 30, 1998, and that she had been continuously physically present in the United States since January 5, 1999, as required for TPS applicants from Honduras.

On appeal the applicant submits photocopies of her passport, a marriage certificate, Social Security Cards and Employment Authorization Cards for herself and her husband, and her husband's New York State Driver License.

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 is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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.

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.

Honduran nationals applying for TPS must demonstrate continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999. The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The record shows that the applicant filed her initial Form I-821, Application for Temporary Protected Status, on July 3, 2002 – nearly three years after the close of the initial registration period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, she met at least one of the conditions 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 Citizenship and Immigration Services (CIS). See 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. See 8 C.F.R. § 244.9(b).

On December 12, 2002, the VSC issued a Notice of Intent to Deny (NOID) in which the applicant, who claims to have entered the United States without inspection in October 1998, was requested to submit evidence that she was eligible for late registration, that she was a citizen of Honduras, that she had continuously resided in the United States as of December 30, 1998, and that she had been continuously physically present in the United States from January 5, 1999. The applicant responded on December 31, 2002, with photocopies of: her Honduran passport, issued on August 29, 2002; her Honduran birth certificate; her Honduran national identity card, issued on May 27, 1999; a letter from the manager of Syntho Pharmaceuticals, Inc., of Farmingdale, New York, dated December 23, 2002, stating that the applicant had been an employee of the company for the past three and one-half years; a letter from [REDACTED], dated December 26, 2002, stating that the applicant had been a tenant in his

home since June 1998; a marriage certificate stating that the applicant and [REDACTED] were married in Santa Rita, Honduras, on May 10, 1997; and additional documentation relating to [REDACTED]

On July 17, 2003, the director denied the application on the grounds that the evidence submitted by the applicant failed to establish that she had continuously resided in the United States since December 30, 1998, and that she had been continuously physically present in the United States from January 5, 1999, to the date of filing in July 2002.

On appeal, the applicant resubmits some documentation already in the record, and submits photocopies of the most recent Employment Authorization Cards issued to herself and her husband.

No further evidence has been submitted to demonstrate that the applicant meets the continuous residence and continuous physical presence requirements for Honduran nationals. As pointed out in the VSC Director's decision, the applicant's national identity card was issued to her in Honduras on May 27, 1999, which was after the requisite dates for continuous residence in the United States (December 30, 1998) and continuous physical presence in the United States (January 5, 1999). The letter from the applicant's employer in December 2002 states that she had worked for the company for three and a half years, which would go back only to June 1999. As for the letter from the landlord who states that the applicant had lived in his house since June 1998, that letter is not supplemented by any documentary evidence of the applicant's residence in the house over that time period. Letters from acquaintances are not, by themselves, persuasive evidence of an alien's continuous residence and physical presence in the United States. Furthermore, while the landlord stated that the applicant had been his tenant since June 1998, the applicant stated on her TPS application that she did not enter the United States until October 1998.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. 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 lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to explain the evidentiary inconsistencies discussed above.

The AAO concludes that the applicant has failed to submit sufficient documentary evidence to establish that she has been continuously physically present in the United States since January 5, 1999, and has continuously resided in the United States since December 30, 1998, as required for TPS applicants from Honduras under 8 C.F.R. § 244.2(b) and (c). The decision of the VSC Director will be affirmed on those grounds.

Beyond the decision of the director, the evidence of record does not establish that the applicant is eligible for late TPS registration. The applicant claims eligibility for late initial TPS registration based on her marriage to [REDACTED], a Honduran national who filed for TPS on May 3, 1999, was approved on January 14, 2000, and has regularly re-registered for TPS since then. While the record includes a photocopy of a marriage certificate which appears to indicate that the applicant was married to [REDACTED] in Santa Rita, Honduras, on May 10, 1997, the AAO notes that the TPS application [REDACTED] filed in 1999, and his first three re-registration applications in 2000, 2001, and 2002, all state that he was single. Not until his fourth re-

registration application, filed in May 2003, did [REDACTED] state that he was married and identify the applicant as his wife. If the applicant was not married to [REDACTED] during the initial registration period for Honduran nationals from January 5 to August 20, 1999, she would not be eligible for late registration under 8 C.F.R. § 244.2(f)(2)(iv). The applicant has not resolved the inconsistency between the data on her marriage certificate and the information provided by [REDACTED] in his first four TPS applications with respect to the date of their marriage. Accordingly, the application must also be denied for failure of the applicant to establish her eligibility for late registration under 8 C.F.R. § 244.2(f)(2)(iv).

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 TPS 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 that burden.

ORDER: The appeal is dismissed.