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U.S. Citizenship
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Services

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SEP 14 2007

FILE:



Office: VERMONT SERVICE CENTER

Date:

[EAC 06 252 76567]

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, Vermont 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 applying for 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 she was eligible for late registration. The director also denied the application because the applicant failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, the applicant asserts her claim of eligibility for TPS.

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 TPS 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.

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.

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).

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS) on May 29, 2006, six years after the initial registration period had closed.

On November 30, 2006, the applicant was requested to submit evidence to establish 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 her continuous physical presence in the United States as well as provide a list of her residences since December 1998. The applicant was also requested to submit evidence to establish her identity. The director determined that the record did not contain a response from the application; therefore, the director denied the application on January 30, 2007.

The applicant, on appeal, states that she did not apply for TPS during the initial registration period because her mother, [REDACTED] did not have enough money to apply for her. The applicant also provides the following evidence: copies of her State of California Benefits Identification Card issued on May 6,

2004; copies of her high school student identification card for the school year 2003 to 2004; copies of her mother's Honduran personal identification card and Employment Authorization Documents; copies of her Honduran birth certificate with an English translation; copies of her mother's Honduran birth certificate with an English translation; a copy of her mother's Internal Revenue Service (IRS), Form W-2, Wage and Tax Statement for 2005; copies of her immunization record; a copy of her hospital identification card of unknown origin; a copy of an appointment card dated January 18, 2005, from Centro De Salud Escolar in Long Beach, California; a copy of a receipt from the Jackson Memorial Hospital dated August 15, 2005; copies of her pre-surgical procedure instructions; and a copy of a billing statement dated June 6, 2005, from Borinquen Health Care Center in Miami, Florida.

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

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.

On appeal, the applicant asserts that she is eligible for TPS late registration because her mother is an eligible TPS registrant. A review of her mother's record reflects that she was granted TPS on August 28, 1999, and therefore, her mother is an eligible TPS registrant. As such, the applicant has established that she has met one 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 on this ground will be withdrawn.

However, in addition to meeting the criteria for late registration, the applicant must also establish her continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States since January 5, 1999, to the date of filing her application.

The evidence submitted by the applicant all post-dates the beginning of the requisite time periods for qualifying continuous residence and continuous physical presence in the United States. In addition, a review of her mother's record reveals that she had claimed on her applications for TPS filed on July 3, 2002, June 30, 2003, and on January 11, 2005, that the applicant was residing in Honduras.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the applicant has failed to establish that she satisfies the continuous residence and continuous 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 on these grounds must be affirmed.

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 this burden.

ORDER: The appeal is dismissed.