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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

SEP 17 2007

consolidated herein

[EAC 06 245 75875]

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:

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 Director, Vermont Service Center (VSC), denied the application. The application 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 seeks 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 found that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States.

On appeal, the applicant asserts that she is eligible for TPS based on her continuous residence and continuous physical presence. The applicant submits additional documentation in support of her claim.

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.

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 in the United States since January 5, 1999.

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until January 5, 2009, upon the applicant's re-registration during the requisite time period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he or she fell within at least one of the four provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is on 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). 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 record reflects that the applicant filed an initial TPS application [EAC 03 181 51605] with the VSC on May 19, 2003 – almost four years after the close of the initial registration period for Hondurans. The director accepted the application under the late filing provision in 8 C.F.R. § 244.2(f)(2). The applicant did not submit any supporting documents along with her application. In response to the director's request for further evidence of qualifying continuous residence and physical presence, the applicant submitted a letter from her landlord, several rent receipts, and proof of remittance payments in 2002 and 2003. The director denied that application for failure to establish eligibility for late registration and for failure to establish qualifying continuous residence and continuous physical presence.

On January 6, 2005, the applicant filed an application to re-register for TPS [WAC 05 105 74875] with the California Service Center (CSC). On January 11, 2006, the CSC director denied the application for re-registration because the applicant had not been previously granted TPS.

On May 29, 2006, the applicant filed the current TPS application with the VSC. Again, the director accepted it under the late initial filing provisions of 8 C.F.R. In support of her application, the applicant submitted her passport; her translated birth certificate; the New Jersey birth certificate of her child, born on May 7, 2001; and, her CIS receipt notice for the TPS application she filed on January 6, 2005.

On January 11, 2007, the director determined that the applicant had failed to establish she was eligible for late registration, had failed to establish her qualifying continuous residence and continuous physical presence, and denied the application.

On appeal, the applicant submits proof of remittance payments from 2002 through 2005. None of the documentation submitted overcomes the applicant's failure to file her TPS application within the initial registration period. The applicant has not submitted any evidence to establish that she has met any of the criteria for late registration described in the regulations at 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application on this ground will be affirmed.

Furthermore, the record reflects that the applicant did not enter the United States until May 20, 1999 – almost five months after the cut-off date for the continuous residence and physical presence requirements for Honduran TPS. The applicant indicated on her application that she last entered the United States without inspection, on May 20, 1999. The submitted documents only show physical presence since about May 1999. The applicant is therefore unable to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Furthermore, because the applicant entered the United States after the requisite time periods for continuous residence and continuous physical presence, she is statutorily ineligible for the benefit sought. Consequently, the director's decision to deny the application for TPS on these grounds will also 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 temporary protected status has the burden of proving that he or she meets the requirements cited 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.