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U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

[EAC 06 273 70730]

OFFICE: Vermont Service Center

DATE:

SEP 24 2007

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 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 claims to be a 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 on the grounds that the applicant failed to establish her eligibility for late TPS registration; failed to establish her continuous residence and physical presence in the United States for the requisite time periods; and failed to provide the final court dispositions of two arrests in California.

On appeal the applicant submits some documentation pertaining to her length of stay in the United States and her criminal record.

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 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.

- (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.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

8 C.F.R. § 244.1 defines “felony” and “misdemeanor:”

Felony means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

Misdemeanor means a crime committed in the United States, either

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.
8 C.F.R. § 244.1.

Honduran nationals applying for TPS 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 initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The applicant filed her initial Form I-821, Application for Temporary Protected Status, on June 29, 2006 – nearly seven 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 September 25, 2006, the director issued a Notice of Intent to Deny (NOID) in which the applicant was requested to submit evidence of her eligibility for late TPS registration, her continuous residence and physical presence in the United States from the dates applicable to Honduran nationals, and the final court dispositions of two arrests in the State of California. In response to the NOID the applicant submitted photocopies of various documents dating from 1994 to 1999; two certifications from the Superior Court of California, County of Los Angeles, dated October 10, 2006; and an undated Temporary Restraining Order from the same court.

In a decision issued on February 26, 2007, the director denied the application on the grounds that the evidence submitted by the applicant failed to establish that she was eligible for late TPS registration, that she has been a continuous resident of the United States since December 30, 1998, and that she has been physically present in the country since January 5, 1999, and was inconclusive about the final court dispositions of two arrests in the State of California. The director noted that the applicant's marriage to a U.S. citizen in 1994 would not have made her eligible for late TPS registration under 8 C.F.R. § 244.2(f)(2)(iv) even if the marriage had lasted because her husband was not an alien currently eligible for TPS. The director noted that none of the documentation submitted as evidence of the applicant's residence and physical presence in the United States dates after December 1999, and therefore fails to show that the applicant was continuously resident and physically present in the country during the years that followed up to the filing of her TPS application in 2006. The director also noted that the two documents submitted from the Superior Court of California in 2006 certified that there was no criminal record for a [REDACTED] whereas the Federal Bureau of Investigation (FBI) record on the applicant is under the name of [REDACTED]. Thus, the court documents were inconclusive as to the applicant's criminal record. (The court certifications also state that all misdemeanor records are destroyed after five years.)

On appeal the applicant asserts that she came to the United States on October 28, 1990, and has been living in the country since then. She submits some additional documentary evidence from the 1990s, but nothing more recent. The applicant refers again to her marriage with an American citizen in 1994, and her subsequent attempts to get permanent resident status, but fails to show the relevance of that history to her current application for TPS. The applicant asserts that her two arrests in California during the 1990s were closed by the police, but has not submitted any evidence thereof such as a police record certifying that the cases were closed before submission to a court of law.

Thus, the applicant has failed to overcome any of the bases of denial discussed by the director. She has failed to show that she qualifies for late registration under one of the criteria enumerated at 8 C.F.R. § 244.2(f)(2). She has failed to establish her continuous physical presence in the United States from January 5, 1999, to the date her TPS application was filed in June 2006, and her continuous residence 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). She has failed to furnish satisfactory evidence of the disposition of her two arrests in California during the 1990s. Accordingly, the director's decision will be affirmed on all grounds.

Beyond the decision of the director, the applicant has not submitted a photocopy of her passport, a national identity document from Honduras, or other evidence of her nationality and identity, in accord with the documentary requirements set forth in 8 C.F.R. § 244.9(a)(1). For this additional reason the application for TPS must be denied.

The application will be denied for the above stated reasons, with each considered as an independent and alternative ground 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.