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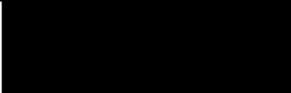
U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

FEB 04 2008

[EAC 02 222 50378]

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office (AAO) 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.

  
for 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 sustained. The decision of the director will be withdrawn and the application will be approved.

The applicant is a native and 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 because the applicant failed to establish that she was eligible for late registration.

On appeal, counsel for the applicant submits a brief statement and additional documentation.

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 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.

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 initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed her initial Form I-821, Application for Temporary Protected Status, with the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), on June 14, 2002.

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.

The burden of proof is upon the applicant to establish that 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 her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

On December 13, 2002, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant, in response, provided documentation indicating that an appeal of the denial of a Form I-360, Petition for Amerasian, Widow or Special Immigrant, filed by her as the Self-Petitioning Spouse of Abusive U.S. Citizen or Lawful Permanent Resident, was dismissed by the AAO on August 22, 2002.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the TPS application on April 25, 2003.

On appeal, counsel asserts that the applicant is eligible for late registration because she had an application for adjustment of status pending during the initial registration period. In support of the appeal, counsel submits a photocopy of a page from the applicant's passport indicating that she had an application for adjustment of status pending on January 21, 1999, under alien registration file [REDACTED]

A review of alien registration file [REDACTED] reveals the following:

1. On June 30, 1991, [REDACTED] the applicant's mother, filed a Form I-130, Petition for Alien Relative, on the applicant's behalf to qualify her as the unmarried daughter of a lawful permanent resident alien. That application was approved on December 16, 1991. However, on

March 28, 1997, the applicant was married to [REDACTED] a citizen of the United States, thereby terminating her eligibility for classification as the unmarried daughter of a lawful permanent resident alien.

2. On December 31, 1997, [REDACTED] filed a Form I-130 on the applicant's behalf to qualify her as the spouse of a United States Citizen. The applicant simultaneously filed a Form I-485, Application to Register Permanent Residence or Adjust Status. Both the Form I-130 and Form I-485 applications remain in the record un-adjudicated.
3. In or about 1999, the applicant indicates that [REDACTED] abandoned her.
4. On April 30, 2001, the applicant filed a Form I-360. As previously indicated, that application was denied on September 19, 2001. The applicant appealed the decision, and the appeal was dismissed by the AAO on August 22, 2002.
5. The applicant claims to have been divorced from [REDACTED], in or about May 2003.
6. On August 13, 2003, the applicant filed a Form I-485, based on the Form I-130 filed on her behalf by her mother in 1991 (see No. 1, above).

Based on the evidence contained in alien registration file [REDACTED] the applicant had an application for adjustment of status pending during the initial registration period based on her marriage to a United States citizen. Consequently, the director's decision to deny the application for TPS will be withdrawn. As there are no other known grounds of ineligibility, the application will be approved.

An alien applying for Temporary Protected Status has the burden of proving that she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. Here, the applicant has met this burden.

**ORDER:** The appeal is sustained. The decision of the director, dated April 25, 2003, is withdrawn, and the application is approved.