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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: FEB 12 2008

[SRC 03 155 53684]

[EAC 07 245 51205 – Motion]

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 Vermont Service Center. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "R. P. Wiemann".

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center (TSC). An appeal from that decision was dismissed by the Chief, Administrative Appeals Office (AAO). The case is now before the AAO on a motion to reopen. The motion will be dismissed.

The applicant is a national 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 applicant filed her first Form I-821, Application for Temporary Protected Status, with the Texas Service Center (TSC) on March 13, 2002, more than two years and six months after the initial registration period for Hondurans had ended (SRC 02 125 53722 relates). That application was denied due to abandonment on March 3, 2003, because the applicant failed to respond to a request for evidence, dated March 21, 2002, to establish her eligibility for late registration. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed a second Form I-821 with the TSC on May 23, 2003, and indicated that she was re-registering for TPS. The Director of the TSC denied the application on June 3, 2003, because the applicant's initial TPS application had been denied and the applicant was not eligible to re-register for TPS. The applicant filed an appeal on June 19, 2003, which was dismissed by the AAO on June 27, 2007.¹ In that decision the Chief of the AAO determined that the applicant had failed to establish her (1) qualifying continuous residence and continuous physical presence in the United States during the requisite time periods, (2) identity and nationality, and (3) eligibility for late registration. The applicant filed the current motion to reopen on August 24, 2007. On motion, 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 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;

¹ The record reveals that the AAO's decision was not mailed to the applicant until August 2, 2007. It is noted that, on January 11, 2005, while the appeal was pending with the AAO, the applicant filed an application for re-registration for TPS (WAC 05 099 73441 relates) with the California Service Center (CSC) that was erroneously approved by the CSC on September 8, 2005.

- (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.

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 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 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).

The first issue in this proceeding is whether the applicant has established her qualifying continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999.

Based on a review of the documentation contained in the record, including the additional documentation submitted on motion, the applicant has provided sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. She has,

therefore, met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, that ground for denial of her application has been overcome.

The second issue in this proceeding is whether the applicant has established her identity and nationality.

8 C.F.R. § 244.9 states that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of: (Amended 11/16/98; 63 FR 63593)

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

The record contains photocopies of the applicant's Honduran birth certificate, with English translation, and a Florida "Identification Card." Therefore, the applicant has complied with the above requirements to establish her identity and nationality. That ground for denial of her application has also been overcome.

The third issue in this proceeding is whether the applicant is eligible for late registration.

The record confirms that the applicant filed both her first and second TPS applications after the initial registration period for nationals of Honduras and ended. On motion, the applicant still has not submitted any evidence to establish that she meets any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently,

the AAO's finding that the applicant failed to establish her eligibility for late registration will be affirmed and the applicant remains ineligible for TPS.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The motion to reopen is dismissed. The previous decision of the AAO, dated June 27, 2007, is affirmed.