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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER Date: JAN 03 2008

INRE: 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:

[REDACTED]

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 "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vennont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a 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. The director also found that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

Counsel for the applicant timely filed a Fonn I-290B, Notice of Appeal to the Administrative Appeals Unit, in which the applicant stated that she would send proof of her continuous presence and common-law marriage since 1999. Counsel indicated on the Fonn I-290B that a brief and/or additional evidence would be submitted within 30 days of filing the appeal. As of the date of this decision, however, more than four months after the appeal was filed, the AAO has received no further documentation. Therefore, the record will be considered complete as presently constituted.

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 (t)(2) of this section.

The phrase *continuously physically present*, as defined in 8 c.P.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.P.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 designation of TPS for Hondurans has been extended several times, with the latest extension valid until January 5, 2009, upon the applicant's re-registration during the requisite time period.

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed this application with Citizenship and Immigration Services (CIS) on October 2, 2006.

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). 8 c.P.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.P.R. § 244.9(b).

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

The record of proceedings confirms that the applicant filed her application after the initial registration period had closed. 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 record reflects that the applicant filed a Form I-821, Application for Temporary Protected Status, on June 25, 2002, which was denied by the Director, Texas Service Center on August 21, 2002, because the applicant failed to provide evidence that she was eligible for late registration as set forth in 8 C.F.R. § 244.2(f)(2).

In his August 29, 2006, letter accompanying the application at issue in this appeal, counsel stated that the applicant qualified for late registration based on her marriage to an approved TPS beneficiary. The applicant submitted documentation of her marriage to [redacted] on July 14, 2006, in Houston, Texas. The record contains a copy of an Employment Authorization Card issued to [redacted] as a TPS recipient, and was valid from July 25, 2005, to September 9, 2006.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on June 14, 2007. On appeal, the applicant suggests that she and Mr. [redacted] were engaged in a common-law marriage as early as 1999 and that she would submit evidence of this marriage. However, the record shows that on the Form I-821 application signed by the applicant on June 19, 2002, the applicant certified under penalty of perjury that she was single. The applicant also certified that she was single when she signed her Form I-765 application on June 19, 2002.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to explain why she repeatedly certified that she was single if she considered herself to have been in a common-law marriage during this time period. Thus, the applicant's current claim to have been a common law spouse of a TPS recipient since 1999 is without merit.

Under the provisions of the Texas Family Code, a common-law marriage may be shown by establishing three factors: (1) an agreement by the parties to be married, (2) living together in Texas after the agreement is made, and (3) representation to others by the parties that they are married. *Matter of Garcia*, 16 I&N Dec. 623, 624 (BIA 1978). The applicant has failed to provide any evidence to establish that any of these factors has been met.

The applicant has previously submitted evidence in an attempt to establish her qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file her Application for Temporary Protected Status 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 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish her eligibility for late registration will be affirmed.

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

In order to establish her qualifying continuous residence and continuous physical presence in the United States, the applicant has submitted the following documentation:

1. A copy of a post card dated April 25, 1998. The card is addressed to the applicant in Houston, Texas but does not contain a street or post office box for delivery. Additionally, there is no indication that the card was processed through either the U.S. Postal System or the Honduran postal system.
2. Copies of money order receipts dated September 8, 1998, October 19, 1998, January 18, June 5, and October 2, 1999, showing the applicant as the purchaser with an address in Houston, Texas.
3. A partial copy of a November 24, 1998, letter from the Social Security Administration. The copy shows the applicant's name but contains no other information, such as an address, social security number or social security earnings.
4. A copy of a January 12, 1999, letter from Southwestern Bell addressed to the applicant in Houston, Texas.
5. A partial copy of a March 1999 telephone bill from Southwestern Bell.

As discussed above, the applicant stated on her Form I-290B that she would submit additional evidence to establish her continuous presence in the United States. However, the AAO has received no further documentation in support of the appeal.

The applicant has not submitted any evidence to establish her qualifying continuous residence or continuous physical presence in the United States subsequent to October 1999. She has, therefore, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will also be affirmed.

It is noted that in removal proceedings on June 1, 2006, the immigration judge ordered the applicant, in absentia, to be removed to Honduras. The record contains an outstanding warrant of removal dated August 7, 2006.

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.