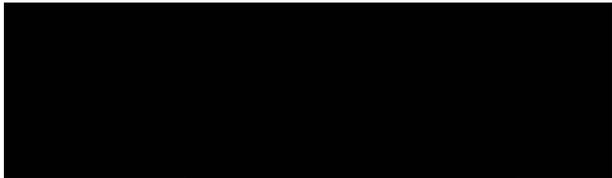


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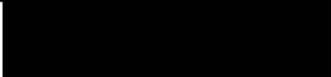


U.S. Citizenship
and Immigration
Services

PUBLIC COPY



FILE:



[SRC 02 181 54455]

OFFICE: VERMONT SERVICE CENTER

Date: JAN 10 2008

INRE:

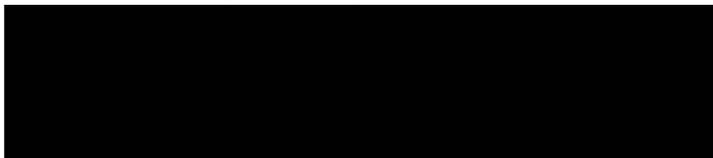
Applicant:



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 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, Vermont 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.

On appeal, counsel asserts that the applicant has been continuously residing and physically present in the United States pursuant to the guidelines published for Honduras TPS. Counsel requests oral argument.

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.

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 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 June 24, 2002.

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.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 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.

On December 18, 2006, a notice was issued advising the applicant that there was no record of her having filed a TPS application during the initial registration period. The applicant was requested to submit evidence of having filed an application during said period. The applicant, however, did not respond to the notice.

On April 30, 2007, 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 was also requested to submit evidence establishing her nationality and her qualifying continuous residence and physical presence in the United States. Counsel, in response, asserted that the applicant had filed her initial TPS application on or about March 30, 1999. Counsel asserted, in pertinent part:

When [the applicant] moved from California to North Carolina on or about April 1, 1999, she immediately filed a change of address, however, she never received notification of her fingerprint appointment from Immigration or any other confirmation regarding her TPS application.

Counsel claimed that he was resubmitting proof of the timely filed TPS application.

The "proof" counsel submitted consisted of a photocopied TPS application signed and dated March 28, 1999, and a Form G-325, Biographic Form signed and dated March 30, 1999. These forms neither imply nor affirm that a TPS application had been filed with the respective Service Center during the initial registration period. No corroborating evidence such as a copy of a money order receipt for the filing fee was provided.

The remaining documents counsel submitted, namely Forms I-797C, Notice of Action, dated May 23, 2002, June 25, 2002, and January 22, 2003, and a Notice dated June 11, 2002, from the Texas Service Center, all relate to the current late registration application and Form I-765, Application for Employment Authorization, for the current application.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on July 16, 2007. Counsel, on appeal, has not submitted any credible evidence to establish that the applicant 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.

As stated above, the applicant was requested on April 30, 2007, to submit evidence establishing her nationality as well as her qualifying continuous residence and continuous physical presence in the United States. In response, counsel submitted the following:

- A copy of the applicant's Honduran passport.
- Three photocopied rent receipts issued on October 1, 1998, November 1, 1998, and December 1, 1998.
- A transaction history of wire transfers from MoneyGram International from March 1, 1999 to October 5, 2001.
- A photocopy of her North Carolina identification card (ill) issued on April 21, 1999.
- A copy of the applicant's social security card and employment authorization card for the period June 15, 2001, through June 15, 2001.
- A letter dated January 8, 2003, from [redacted] human resource coordinator, at Farmland Foods, Inc., in Denison, Iowa, who attested to the applicant's employment since September 11, 2001.

The director determined that the rent receipts were insufficient to establish the applicant residence since December 30, 1998 through the filing of her application on June 24, 2002. The director also determined that the applicant's ID card along with the document from MoneyGram International only served to establish the

applicant's residence and presence since March 1, 1999. The director concluded that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods and denied the application.

On appeal, counsel provides copies of documents that were previously provided by the applicant along with Notices of Action that were generated by CIS in 2002 and 2003. Counsel also provides photocopies of:

- Forms 1-765 and Forms 1-821 filed in 2005 and 2007.
- Notices of Action dated in 2005, which rejected Forms 1-821 and 1-765 applications filed in 2005.
- Individual Income Tax Returns, Form 1040, for 2004 and 2005.
- A wage and tax statement for 2005.
- A letter dated February 15, 2003, updating the applicant's address from North Carolina to Iowa.
- An employment authorization card valid from June 13, 2003, through January 5, 2005.
- An Iowa ID card issued on August 27, 2001.

The applicant claims to have resided in the United States since July 28, 1998, and provides three rent receipts as evidence to establish her continuous residence through December 1, 1998. The receipts have little probative value or evidentiary weight as they did not list an address and were not corroborated by the individual who signed them. Further, there is a significant period of time, namely December 30, 1998, through February 28, 1999, that has not been accounted for. The AAO does not view the remaining documentation as substantive enough to support a finding that the applicant continuously resided in the United States during the period in question.

The applicant has not submitted any evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the period from December 30, 1998, to February 28, 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.

Finally, counsel requests oral argument. The regulation at 8 C.F.R. § 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. CIS has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Consequently, the request is denied.

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.