



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: JAN 30 2008

[EAC 01 257 55359]

[EAC 03 158 50649]

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 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 Director, Vermont Service Center (VSC), denied the initial application. The director denied a subsequent application for re-registration, which is now before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office, and the appeal will be sustained.

The applicant is a native and citizen of Honduras who seeks 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 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.

On appeal, counsel for the applicant asserts that the applicant filed her initial TPS application in a timely manner and that she has been physically present and has continuously resided in the United States since October 29, 1989.

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 as 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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until January 5, 2009, upon the applicant's re-registration during the requisite time period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she fell within at least one of the four provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is on 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 record reflects that the applicant filed her initial TPS application on February 19, 1999 – during the initial registration period for Hondurans. In support of her application, the applicant submitted photocopies of her birth certificate, with translation; the identity page of her Honduran passport, issued in New York City on June 15, 1994; a remittance receipt, dated February 3, 1996; and, a car insurance billing statement, indicating a due date of September 25, 1997. On January 28, 2000, the director sent the applicant a notice requesting that she resubmit two passport-style photographs. The applicant did not respond to the director's request. On June 15, 2000, the director denied the application as abandoned for failure to submit requested evidence in support of her application. The director informed the applicant that a denial due to abandonment could not be appealed, but that she had the right to file a motion to reopen if she believed she met one of three criteria. The applicant did not file a motion to reopen.

On February 25, 2002, the applicant filed for TPS re-registration. In support of the application, the applicant submitted all the previously submitted documents and a copy of her marriage certificate, indicating that she was married in Huntington, New York, on March 28, 1991. The director accepted the application under the late-filing provisions of 8 C.F.R. § 244. On November 5, 2002, and November 15, 2002, the director sent the applicant notices, requesting that she submit evidence that, during the initial registration period, she met one of the four late-filing criteria listed in 8 C.F.R. § 244.2(f). The applicant did not respond to the director's requests. On April 7, 2003, the director denied the application as abandoned for failure to submit the requested evidence.

On December 1, 2004, the applicant filed a motion to reopen the April 7, 2003, decision. In support of the motion, the applicant submitted various documents that the director found insufficient to establish her eligibility for late registration and insufficient to establish her continuous residence since December 30, 1998.

On April 28, 2003, the applicant filed the current re-registration application with the VSC. The director accepted the application under the late-filing provisions of 8 C.F.R. 244.

The applicant subsequently filed for re-registration on January 6, 2005, with the California Service Center (CSC). That application was rejected because it contained incorrect fees and it was not submitted together with her application for employment authorization. On January 20, 2005, the applicant resubmitted the application.

On July 20, 2005, the director, VSC, dismissed the applicant's December 1, 2004, motion to reopen.

On September 9, 2005, the director, CSC, denied the January 20, 2005, re-registration application because the applicant had not previously been granted TPS.

On March 24, 2006, the director, VSC, sent the applicant a notice of intent to deny her April 28, 2003, re-registration application, and requested that the applicant submit evidence of eligibility for late registration. In the notice, the director incorrectly listed the TPS criteria for Salvadorans. In response to the request, the applicant asserted that she applied timely for TPS, during the initial registration period, and submitted further evidence of her residence and physical presence in the United States. On July 28, 2006, the director sent the applicant a corrected notice, requesting evidence of eligibility for late Honduran registration. The applicant responded to that request as well.

On May 9, 2006, the director, VSC, denied the April 28, 2003, re-registration application because the applicant failed to establish her eligibility for late registration.

On June 6, 2006, the applicant filed an appeal of the May 9, 2006, decision. The appeal was rejected because the proper fee was not submitted. The applicant re-filed the appeal on June 22, 2006.

On December 12, 2006, the director again denied the April 28, 2003, re-registration application on the basis that the applicant failed to establish her eligibility for late registration. The director also found that the applicant had submitted evidence to show that she was present in the United States prior to December 30, 1998, but that she had not submitted sufficient evidence to establish that she had continuously resided and had been continuously physically present from January 5, 1999, to April 28, 2003, the date of filing of her re-registration application.

On appeal, counsel for the applicant asserts that the applicant asserts that the applicant filed her initial TPS application in a timely manner and that she has been physically present and has continuously resided in the United States since October 29, 1989. The applicant submits additional documentation.

On appeal, and along with subsequent re-registration applications, the applicant has submitted evidence of her qualifying residency and continuous physical presence. Specifically, the record contains a car insurance policy form, that lists a policy period from October 22, 1998 to April 22, 1999; a receipt for car insurance payment, dated December 20, 1999; a hospital bill, dated February 8, 2001, indicating service on November 15, 2000; an application to revalidate her passport from the Honduran consulate in New York City, dated September 23, 2002; remittance receipts, dated February 1, 2003, and March 16, 2003; and, the applicant's various re-registration applications and correspondence with CIS, from 1999 to the present. Together, these documents establish that the applicant continuously resided in the United States since February 13, 2001. Consequently, the applicant has submitted sufficient evidence to establish that she has met the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c).

If the applicant has satisfied the other requirements for TPS, the first application can be reopened *sua sponte*, in accordance with 8 C.F.R. 103.5(a)(5). A thorough review of the record reflects that the applicant has satisfied all the requirements for TPS. The applicant's passport and birth certificate establish her identity and her Honduran nationality. The record contains results from a recent fingerprint investigation of the applicant conducted by the Federal Bureau of Investigation (FBI), which indicate no criminal record that would bar the applicant from TPS eligibility. Therefore, the initial application is reopened, *sua sponte*, and the application is approved.

An alien applying for TPS has the burden of proving that he or she meets the requirements listed above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has met this burden.

ORDER: The appeal is sustained. The initial application is reopened, *sua sponte*, and the application is approved.