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U.S. Citizenship
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Services



FILE:

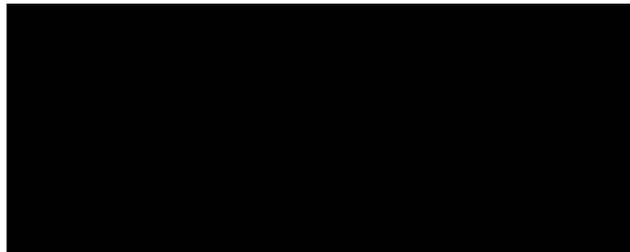
[EAC 06240 51063]

Office: VERMONT SERVICE CENTER

Date MAR 10 2008

IN RE:

Applicant:

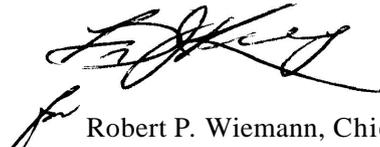


APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office (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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vennont Service Center (VSC), 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 The decision of the director will be withdrawn and the application will be approved.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 citizen of Honduras who is applying for 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, 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 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;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (t) (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 (t)(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 Form 1-821, Application for Temporary Protected Status, on August 21, 2006 - seven years after the initial registration period had ended.

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(t)(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 record reflects that the applicant filed a Form 1-589, Request for Asylum in the United States, on September 2, 1994. The Rosedale, New York, Asylum Office was unable to grant the application and, on December 29, 1995, issued an Order to Show Cause and Notice of Hearing and referred the applicant's asylum application to an Immigration Judge (11). On June 16, 1997, an Immigration Judge in New York administratively terminated the proceedings, in order to allow the applicant to file a Form 1-485, Application to Register Permanent Residence or Adjust Status, based on an approved Form 1-130, Petition for Alien Relative, filed on the applicant's behalf by her then U.S. citizen spouse. The Form 1-485 was subsequently denied on November 5, 2004.

On January 23, 2007, the director requested the applicant to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(t)(2). The director advised the applicant that because her Form 1-589 had been terminated and her Form 1-485 had been denied, and she had not filed her TPS application within 60 days of the denial of the Form 1-485, that she did not qualify for late registration under 8 C.F.R. § 244.2(t)(2)(ii).

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on February 26, 2007. The applicant filed her appeal from that decision on March 26, 2007.

On appeal, the applicant asserts that she is eligible for late registration because her current spouse, •
whom she married on May 25, 2002, has been granted TPS.

The applicant's assertion on appeal is not persuasive. CIS records reflect that the applicant's spouse was issued an Employment Authorization Card based on his having filed an application for TPS; however, his

TPS application has not been granted and he therefore does not qualify as "an alien currently eligible to be a TPS registrant," as required under § 244.2(f)(2)(iv). Furthermore, the applicant was not married to _ during the initial registration period for Honduran nationals in 1999, as required under the late registration provision of 8 C.F.R. § 244.2(f)(2)(iv).

However, the IJ's order, dated June 16, 1997, discussed above, does not indicate that the applicant's asylum application was either granted, denied, or withdrawn. Thus, the applicant's asylum application is still considered pending before, and subject to further review by, the 11.

Administrative closing of a case does not result in a final order. It is merely an administrative convenience which allows the removal of cases from the calendar in appropriate situations. See *Matter of Gutierrez-Lopez*, 21 I&N Dec. 479 (BIA 1996).

The applicant has an application for asylum which is pending or subject to further review or appeal, and is eligible to file a late application for TPS under 8 C.F.R. 244.2(f)(2)(ii). There are no other known grounds of ineligibility. Therefore, the appeal will be sustained. The decision of the director will be withdrawn and the application will be approved.

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. Here, the applicant has met this burden.

ORDER: The appeal is sustained. The decision of the director dated February 26, 2007, is withdrawn, and the application is approved.