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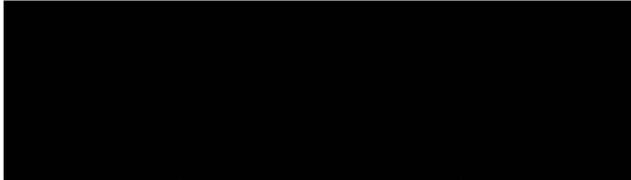
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

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Office: NEBRASKA SERVICE CENTER

Date: MAR 21 2008

INRE:

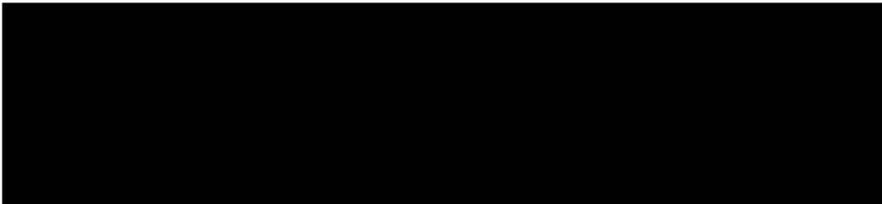
Applicant:



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 office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The matter is an application for Temporary Protected Status (TPS). The application was denied by the Director, Nebraska Service Center (NSC). A subsequent appeal was remanded by the Director, Administrative Appeals Office (AAO). The Director, Nebraska Service Center, subsequently recommended that the application be denied and certified the case to the Administrative Appeals Office (AAO) for review. The director's recommendation will be withdrawn and the application will be approved.

The applicant is a native and citizen of Honduras who indicated on her application that she entered the United States in July 1994 without a lawful admission or parole. The director found that the applicant had failed to satisfy the requirements for late registration. The director recommended that the application be denied, and certified the decision for review.

The applicant has challenged the director's recommendation and has submitted additional evidence subsequent to the certification of his case.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant did file an initial application for TPS during the initial registration period on April 12, 1999. That application was denied for abandonment on February 17, 2000, for failure to respond to a request for evidence to establish eligibility for TPS. 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 subsequent re-registration Form I-821, Applications for Temporary Protected Status, on July 25, 2002. The director denied this application because it was filed outside of the initial registration period and because the applicant had failed to establish her eligibility for filing under the provisions of late registration. The director also found that the applicant failed to establish continuous residence and continuous physical presence in the United States during the qualifying period. Since the applicant did properly file an application during the initial registration period, the director erred in his explanation of the basis for denial. While the director found the applicant ineligible for TPS because she had failed to establish eligibility for late registration, the director's decision did not sufficiently explain the entire basis for denial.

The applicant's initial Form I-821 was properly filed on April 12, 1999. That initial application was denied by the director on February 17, 2000. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits. It is noted that the director issued a request for evidence on August 3, 1999, to which the applicant responded. However, the director issued another request for evidence on August 31, 1999. The applicant failed to respond to this notice, which is the basis for the director's decision of the application as abandoned.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed this Form 1-821 on July 25, 2002. Since the initial application was denied on February 17, 2000, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration. The director denied this application because it was filed outside of the initial registration period and because the applicant had failed to establish her eligibility for filing under the provisions of late registration.

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 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 (t)(2) of this section.

The term *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 term *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. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. 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 period.

The record reveals that the applicant filed this application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on July 25, 2002.

The burden of proof is upon the applicant to establish that he meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by 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 of proceeding 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 from January 5, 1999 through August 20, 1999, she fell within the provisions described in 8 C.F.R. § 244.2(t)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

On November 25, 2002, the applicant was provided the opportunity to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(t)(2). The applicant was also requested to submit evidence establishing her date of entry and continuous residence in the United States since December 30, 1998 and her continuous physical presence in the United States from January 5, 1999 to the date of filing the application. The applicant, in response, provided evidence in an attempt to establish continuous residence and continuous physical

presence during the **qualifying** period. She did not present evidence of her eligibility for late registration. Therefore, the director denied the application.

On appeal, the applicant stated that she had not applied for late registration. The applicant also submitted evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the **qualifying** period.

On February 15, 2005, the AAO remanded the matter to the NSC director finding that the current application was an annual re-registration and that the record does not reflect the director's acknowledgement or review of the applicant's prior applications before a decision was rendered on the current application as a late initial registration application. The director was also instructed to issue a new decision that if adverse to the applicant, was to be certified to the AAO for review.

In his Notice of Certification dated January 18, 2006, the director concluded that the applicant failed to establish that she was eligible for filing her TPS application after the initial registration period from January 5, 1999 to August 20, 1999. The director, therefore, recommended that the application be denied.

The applicant submitted a subsequent motion to reopen and provided evidence in an attempt to establish her **qualifying** continuous residence and continuous physical presence in the United States.

Upon a review of the record, it is determined that this application should not have been dismissed as a late initial registration application. This basis for the director's decision must be withdrawn. It is also noted that the applicant has provided sufficient evidence to establish her **qualifying** continuous residence since December 30, 1998, and continuous physical presence from January 5, 1999 to the filing date of the TPS application. Consequently, the director's decision to deny the application for temporary protected on this basis status will also be withdrawn.

It is noted that a Federal Bureau of Investigation fingerprint results report indicates that the applicant was arrested by the Gurnee, Illinois, Police Department on March 4, 2000 for "Retail Theft." The final disposition for this arrest indicates that the applicant was not prosecuted for this charge.

An alien applying for temporary protected status 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 met this burden.

ORDER: The director's recommendation to deny the application is withdrawn and the application for temporary resident status is approved.