

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

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FILE:



[EAC 03 213 53803]

OFFICE: Vermont Service Center

DATE: SEP 16 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 in your case. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office.

 Robert P. Wieman, 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 is stated 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 record reveals that the applicant filed a TPS application during the initial registration period on July 30, 1999, under receipt number SRC 99 238 51478. The Director, Texas Service Center, denied that application due to abandonment on February 2, 2000, because the applicant failed to respond to a request for additional information in support of her TPS application. The director further advised the applicant that a denial due to abandonment may not be appealed; however, the applicant may file a motion to reopen within 30 days from the date of the denial. The record reflects that the applicant did not file a motion to reopen within the requisite timeframe.

On July 3, 2003, the applicant filed a second TPS application under receipt number EAC 03 213 53803, and indicated she was filing a new application. The Director, Vermont Service Center, denied that application on January 7, 2005, after he determined that the applicant failed to establish her eligibility 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 periods¹. On January 27, 2005, the applicant submitted an appeal from the denial decision.

On appeal, the applicant asks CIS to review and reopen her case.

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

¹ It is noted that on page 2 of the decision, the director incorrectly stated the continuous residence and continuous physical presence dates for El Salvadorans. However, the director previously had stated the correct dates for Hondurans and properly denied the applicant's TPS for failure to establish continuous residence from December 30, 1998, and continuous physical presence from January 5, 1999.

- (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 July 3, 2003.

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 August 19, 2003, 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 qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation relating to her residence and physical presence in the United States.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on January 7, 2005.

On appeal, the applicant reasserts her eligibility for TPS

The applicant 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.

The record contains the following documentations previously submitted by the applicant:

1. A copy of the applicant birth certificate with an English translation;
2. A copy of an earnings statement from Tandem Distribution Services, Inc., dated September 30, 1999;
3. An employment letter dated July 25, 2002, from [REDACTED], HR Director, stating that the applicant has been employed since May 24, 1999;
4. A copy of a Benefit Confirmation Statement dated January 1, 2001;

5. An employment report from Employment Security Commission of North Carolina, dated July 13, 2000, showing different employers and the years the applicant had been employed between the period from April 1, 1999 to March 31, 2000;
6. A copy of a pay stub from Royal Home Fashions, Inc., dated August 12, 2000;
7. Copies of pay Stubs from Aramark Management Services, LP, for the year 2000;
8. A copy of a vehicle Registration Card from the State of North Carolina;
9. A copy of an insurance policy from Allstate dated September 21, 1999;
10. Copies of State of North Carolina Vehicle Inspection Receipts dated October 2, 1999 and November 1, 2000;
11. Copies of receipt payments to Allstate for the years 2000, 2001, and 2002;
12. Copies of phone bills from Verizon for the years 2001 and 2002; and,
13. Copies of statements from GTE Telephone Operations dated August 23, 1999, and September 4, 1999.

In addition, the applicant submitted the following:

14. A copy of a health insurance card for the applicant's son, valid from September 1, 2005 to September 30, 2005;
15. A copy of a pay stub from the Cosmopolitan Group, LLC, dated August 31, 2001;
16. A copy of a pay stub from Retailers & Manufacturers, dated September 9, 2005;
17. A copy of a New Jersey Hospital Care Assistance Program from Christ Hospital valid from July 22, 2001 to July 21, 2002;
18. Copies of medical bill payment activities for the years 2002 to 2006;
19. A copy of a Verizon phone bill dated February 27, 2004;
20. A copy of the first portion of the Form 1040EZ, Income Tax Return for Single and Joint Filers With no Dependents for the year 2005;
21. Copies of the Form(s) W-2, Wage and Tax Statement, for the years 2005 and 2006; and,
22. A copy of an order form from Royal Prestige dated December 19, 2005.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence or continuous physical presence in the United States during the qualifying period to the date of filing her TPS application. It is reasonable to expect that the applicant would have sufficient contemporaneous evidence to support her assertions of being in the United States during the requisite time period since she claimed to have been present since May 28, 1998. It is noted that on her Form I-821, Application for Temporary Protected Status, filed on July 30, 1999, the applicant indicated that she entered the United States on November 18, 1998. The documents submitted are not sufficient evidence since they do not encompass the entire timeframe specified. The earliest date shown on any document that establishes the applicant's presence in the United States is April 1, 1999. The applicant 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.

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.