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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date: APR 11 2005

[SRC 04 022 54227]

[REDACTED]

IN RE:

Applicant:

[REDACTED]

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and 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 for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish she was eligible for late registration.

On appeal, the applicant submits a statement and additional evidence in support of the appeal.

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 [identified under SRC 99 153 51828] during the initial registration period. That application was denied on February 18, 2000, for failure to provide arrest records and final court dispositions for charges identified in the Federal Bureau of Investigation (FBI) fingerprint results report relating to the applicant's fingerprints. These charges included "Theft-F," dated April 30, 1990, Sheriff's Office, Conroe, Texas, and "Delivery Cont[rolled] Substance," dated November 6, 1990, Sheriff's Office, Conroe, Texas. It is noted that the applicant responded to the October 29, 1999, request for court dispositions and arrest records, with a Montgomery County, Conroe, Texas, police department records search indicating that no records were found under the name [REDACTED] date of birth 3/1/1961, for that department. The charges, however, reflect that the applicant used an alias of [REDACTED] date of birth "3/1/1962" at the time of arrest.

The director concluded that the evidence of record did not establish that the applicant had complied with the requirement to send arrest records and certified court dispositions, and therefore, denied the application and revoked the employment authorization. The applicant did not file an appeal to the decision of February 18, 2000, during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on October 23, 2003. The director denied this second 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 applicant's initial Form I-821 was filed on April 2, 1999. That initial application was denied by the director on February 18, 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.

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 subsequent Form I-821 on October 23, 2003. Since the initial application was denied on February 18, 2000, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a 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 parole; 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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until July 5, 2006, 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 latest application with Citizenship and Immigration Services (CIS), on October 23, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she fell within the provisions described in 8 C.F.R. § 244.2(f)(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 late initial registration. 8 C.F.R. § 244.2(g).

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 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).

On April 14, 2004, 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). In response, the applicant stated that she filed for TPS when the program

first began in 1999. She submitted numerous receipt notices, and the April 1999 fingerprint fee receipt. The applicant also submitted printouts of case status inquiries.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on May 3, 2004.

On appeal, the applicant states that this is not her first TPS application. She states that she filed her initial TPS application on April 2, 1999, and indicates that she received work permits "until 2001 to 2002." The applicant states that she came to the United States in 1997, and has eight children residing in the United States. She asserts that she has not received a decision on her first TPS application filed during the initial registration period. The applicant submits: a case status inquiry dated April 26, 2004, from the uscis.gov website indicating that she will receive written notice on Form I-821 [SRC 99 153 51828]; receipt notices for her 1999, 2000, 2001, 2002, and 2003 applications; a copy of an Employment Authorization document (EAD), relating to SRC 01 236 58199, under Category A12, valid from July 5, 2001 through July 5, 2002; a fingerprint fee receipt dated April 27, 1999; and, a money order payable to CIS and dated May 16, 2004.

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) and (g). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

It is noted that on the Forms I-821, submitted on April 2, 1999, June 10, 2002, and October 23, 2003, the applicant certified under penalty of perjury that that she had not been under immigration proceedings. On the Form I-821, submitted on June 12, 2001, the applicant indicated that she had been under immigration proceedings in Houston, Texas, in 1998. The FBI fingerprint results report pertaining to the applicant's fingerprints also reflect that under the name [REDACTED], file number [REDACTED] the applicant was charged with being a deportable alien at Harlingen, Texas, on December 9, 1997. The records of CIS reflect that the applicant received a final order of removal on July 22, 1998.

Further, the applicant's arrest record, without evidence that she was not convicted of the charges, would also preclude a finding of eligibility.

In the decision dated February 18, 2000, the director stated that the applicant was ineligible for TPS because she had failed to provide requested court dispositions for criminal offenses. The applicant has failed to submit evidence to establish that she is not ineligible for TPS based upon these criminal offenses.

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 failed to meet this burden.

ORDER: The appeal is dismissed.