



U.S. Citizenship
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FILE: [REDACTED]
[EAC 03 204 53146]

Office: VERMONT SERVICE CENTER

Date: FEB 15 2005

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:



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 Acting Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and 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 acting director denied the application because the applicant failed to establish that she was eligible for late registration.

On appeal, counsel for 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 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
- (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 in the United States 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 initial Form I-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) on June 28, 2003.

To qualify for late registration, the applicant must provide evidence that **during the initial registration period**, she was either in a valid immigration status, had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal pending or subject to further review or appeal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, **and** she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

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 August 12, 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). In response, the applicant submitted documentation relating to her residence and physical presence in the United States.

The acting director determined that the applicant had failed to establish she was eligible for late registration and denied the application on November 19, 2003.

On appeal, counsel submits documentation indicating that the applicant married a United States citizen, [REDACTED] on April 24, 2001. On August 6, 2001, [REDACTED] filed a Form I-130, Petition for Alien Relative, on the applicant's behalf. That application was approved on December 13, 2001. On March 27, 2003, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status.

It appears that counsel is implying that the applicant is eligible for late registration under 8 C.F.R. § 244.2(f)(2)(ii) because she filed an application for adjustment of status, based on her marriage to a United States citizen. Counsel's implication is not persuasive.

In order to qualify for late registration under 8 C.F.R. § 244.2(f)(2), the applicant must have had an application for adjustment of status pending during the initial registration period. The applicant did not file her application for adjustment of status until March 27, 2003, more than three years and seven months after the initial registration period had expired. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

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.