

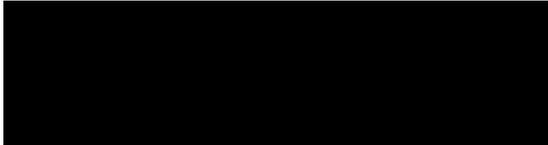
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: Texas Service Center

Date: JUN 24 2005

[SRC 03 143 53319]

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

for 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 (AAO) 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 had failed to establish her eligibility for late TPS registration.

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 initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed her initial application [SRC 01 255 55176] with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on August 11, 2001, after the initial registration period had closed. That application was denied on January 3, 2003, due to abandonment. 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 Form I-821, Application for Temporary Protected Status, on April 24, 2003. The director denied this second application [SRC 03 143 53319] on June 17, 2003, because the applicant failed to establish her eligibility for TPS late registration.

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 a subsequent Form I-821 on April 24, 2003. Since the initial application was denied on January 3, 2003, 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 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.

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 her application with Citizenship and Immigration Services (CIS), on April 24, 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 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).

On May 13, 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 also was requested to submit evidence establishing her continuous physical presence in the United States from January 5, 1999. Also, the applicant was requested to submit a copy of her birth certificate, an official picture identification, and photo identification or national identity document. In response, the applicant provided a copy of her State of Florida Driver License, a copy of her birth certificate along with an English translation, and some evidence in an attempt to establish her qualifying continuous physical presence in the United States; however, she did not submit any evidence to establish her eligibility for late registration. The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on June 17, 2003.

On appeal, the applicant states that she arrived in the United States on February 4, 1997, without inspection. She further states that she could not have been paroled or had a change of status application. In addition, the applicant states that she had not filed any other application with the Service and that she is not in removal proceedings. The applicant also states that her mother has been living in the United States since 1992. The applicant also submits the following along with her appeal: a copy of her Honduran birth certificate along with an English translation; a copy of the birth certificate of her mother [REDACTED] copy of a receipt notice for her mother's applications for employment authorization and temporary protected status; a copy of her 1998 and 1999 Federal Income Tax Returns; and an illegible copy of a rental agreement.

It appears that the applicant claims that she is eligible for late registration because her mother, [REDACTED] [REDACTED] eligible to be a TPS registrant. Although Service regulations may allow the child of an alien currently eligible to be a TPS registrant to file an application after the initial registration period, section 101(b)(1) of the Act defines the term "child" as an "unmarried person under twenty-one years of age." Evidence of record reveals that the applicant was 28 years old during the initial registration period and, therefore, cannot be considered a "child" for immigration purposes. Since the applicant, during the initial registration period, was not the child of an alien currently eligible to be a TPS registrant, she is not eligible for late registration under 8 C.F.R. § 244.2(f)(2). The applicant has not provided any additional evidence to establish her eligibility for TPS late registration. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, it is noted that the record of proceedings contains a copy of the applicant's Honduran passport issued to her on October 5, 2000, in Honduras. Therefore, the applicant could not have met the requirements that she had continuously resided in the United States since December 30, 1998, and she had been continuously physically present since January 5, 1999. 8 C.F.R. § 244.2(b) and (c). Therefore, the application will also be denied for these reasons.

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.