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MAY 21 2005

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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date:
[EAC 02 243 51071]

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:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office (AAO) 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, Vermont 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 applying for 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 because the applicant failed to establish that she was eligible for late registration.

On appeal, counsel for the applicant submits a letter and additional documentation.

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

The record reveals that the applicant filed a first Form I-821, Application for Temporary Protected Status, [EAC 99 232 53228], was filed with the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS) on July 30, 1999. On June 16, 2000, the applicant was requested to appear for fingerprinting, required in connection with her application. The record reflects that the U.S. Postal Service was unable to deliver the request at the address provided by the applicant on her Form I-821.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The applicant's first TPS application was denied on September 12, 2000, for failure to respond to the request to appear for fingerprinting, and failure to provide INS/CIS with a valid, current address. 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 the instant Form I-821 on July 5, 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.

Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision on that application is rendered, must be considered as either a request for annual re-registration or as a new filing for TPS benefits. If an applicant is filing an application for annual re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must re-register annually. In addition, the applicant must continue to maintain the conditions of TPS eligibility. 8 C.F.R. § 244.17.

Since the applicant's first Form I-181 application was denied on September 12, 2000, the instant application cannot be considered as an application for annual re-registration. The instant application can only be considered as a new filing for TPS benefits under the provisions of late registration, since the application was filed outside of the initial registration period.

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 (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 since January 5, 1999. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. As previously indicated, the instant application was filed on July 5, 2002.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he or 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 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 September 9, 2002, the applicant was requested, through counsel, 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 of her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, counsel stated that the applicant did not qualify under any of the provisions for late registration, and that she had trusted an independent company to follow-up on her initial TPS application.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on July 25, 2003.

Counsel states that the applicant filed a TPS application during the initial registration period and that she has a pending visa petition; therefore, she should be considered eligible for late registration. In support of the appeal, counsel submits a photocopy of a Form I-797, Notice of Action, indicating that Barreto Ortega filed a Form I-130, Immigrant Petition for Relative, Fiance(e), or Orphan, on behalf of the applicant on September 8, 1995, to qualify her as the spouse of a U.S. citizen.

It appears that counsel is implying that the applicant is eligible for late registration under 8 C.F.R. § 244.2(f)(2)(ii). Counsel's implication is not persuasive. The document submitted only indicates that a Form I-130 was submitted on behalf of the applicant; it does not indicate that the petition was approved and that the applicant had filed for change of status during the initial registration period.

Furthermore, it is noted that there are discrepancies in the documentation submitted pertaining to the applicant's marital status. On her Form I-821, the applicant did not indicate that she was married; however, counsel has submitted a document indicating that she is married to [REDACTED] a U.S. citizen. Furthermore, counsel had previously stated, in a letter dated October 28, 2002, that the applicant did not qualify for late registration under any of the provisions of 8 C.F.R. § 244.2(f)(2). These discrepancies have not been explained and call into question in the applicant's ability to document the requirements under the statute and regulations. Doubt cast on

any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

It is concluded that the applicant has not established that she qualifies for late registration under the provisions of 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish her qualifying continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999, to the date of filing her application on July 5, 2002

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.