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

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: SEP 17 2007

[EAC 06 255 84328]

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 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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (VSC), denied the application. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a native and citizen of Honduras who seeks 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 she was eligible 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.

On appeal, counsel for the applicant asserts that the applicant is eligible for late initial filing due to exceptional circumstances and submits additional documentation.

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 as 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 (0(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 in the United States since January 5, 1999.

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until January 5, 2009, upon the applicant's re-registration during the requisite time period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she fell within at least one of the four provisions described in 8 C.F.R. § 244.2(0(2) above.

The burden of proof is on 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 record reflects that the applicant filed her initial TPS application [EAC 01 082 51004] on October 10, 2000-more than one year after the close of the initial registration period for Hondurans. The director accepted the application under the late filing provision in 8 C.F.R. § 244.2(0(2). On July 13, 2001, the director requested that the applicant submit evidence of eligibility for late registration and of qualifying continuous residence and continuous physical presence. The applicant did not respond to the director's request. On June 12, 2002, the director denied the application due to abandonment.

The applicant filed the current TPS application on June 1, 2006-more than seven years after the close of the initial registration period for Hondurans. Again, the director accepted it under the late initial filing provision of 8 C.F.R. § 244.2(0(2). In support of her application, the applicant submitted the following:

- A TPS application receipt notice, dated January 19, 2001;
- A copy of her North Carolina marriage certificate, dated September 5, 1996;
- A domestic violence protective order, dated May 21, 1997;

- Emergency room hospital records, dated May 24, 1997;
- A Notice of Action, dated May 7, 1998;
- A copy of the applicant's resume;
- A sworn affidavit from the applicant;
- 2000 and 2001 Internal Revenue Service (IRS) tax forms;
- 2000 and 2001 Massachusetts tax forms;
- A copy of a criminal record request form, executed on March 10, 1998; and,
- A letter from the applicant's psychiatrist.

Counsel for the applicant asserted that the applicant had a Form I-589, Application for Asylum or Withholding of Removal, pending until it was denied by the Board of Immigration Appeals on June 29, 1999, and that her Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, was pending until it was denied on July 27, 1998. Counsel asserted that the applicant registered late for TPS because of mental and psychological issues.

On January 12, 2007, the director determined that the applicant had failed to establish she was eligible for late registration, had failed to establish her qualifying continuous residence and continuous physical presence, and denied the application.

On appeal, the applicant submits documents previously submitted with her TPS application; the applicant's disability paperwork; and, a copy of the packet of documentation she submitted with her self-petition as a battered spouse married to a U.S. citizen. None of the documentation submitted overcomes the applicant's failure to file her TPS application within the initial registration period. The record reflects that the last pending application that would have tolled the applicant's late TPS registration, her asylum application, was denied on June 29, 1999. The applicant had 60 days after the denial of her asylum application to apply for TPS. She did not. The applicant's failure to file a timely TPS application because of emotional and psychological distress is not a basis for late registration. There is no exceptional circumstance exception for late filing under the Act or the regulations. The applicant has not submitted any evidence to establish that she has met any of the criteria for late registration described in the regulations at 8 C.F.R. § 244.2(0)(2). Consequently, the director's decision to deny the application for this reason will be affirmed.

The documents submitted on appeal, together with those previously submitted, are sufficient to establish the applicant's qualifying continuous residence and continuous physical presence. Overcoming these grounds for denial, however, does not mitigate the applicant's failure to file her application for TPS during the initial registration period.

Beyond the decision of the director, the applicant has not provided sufficient evidence to establish her identity and nationality. She has not submitted a photo identity document as required in 8 C.F.R. § 244.9(a)(11) to establish her identity. The application must be denied for this additional reason.

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 Temporary Protected Status has the burden of proving that he 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.