

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

M1

PUBLIC COPY

[REDACTED]

FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: FEB 01 2008
[EAC 01 248 50384]
[REDACTED]-consolidated]

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 Vermont Service Center. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant claims to be a 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 asserts that the applicant had initially registered for TPS in June 2000.

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 of a 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 Temporary Protected Status 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 January 5, 1999, through August 20, 1999. The record reveals that the applicant filed her application with Citizenship and Immigration Services (CIS) on May 25, 2001.

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

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).

The record reflects that on January 27, 1993, the applicant filed a Form I-589, Application for Asylum and Withholding of Removal, and was given alien registration number [REDACTED]. On May 31, 1994, the asylum request was denied and a Form I-221, Order to Show Cause and Notice of Hearing, was issued. On September 22, 1994, an immigration judge (IJ) ordered the case administratively closed because the applicant failed to appear for the hearing and the legacy Immigration and Naturalization Service expressed no opposition. On October 29, 1997, a Form I-205, Warrant for Arrest of Alien, and a Form I-862, Notice of Hearing, was issued. On January 16, 1998, an IJ issued an order granting the alien voluntary departure in lieu of removal on or before May 15, 1998. The right of appeal was waived.

On September 13, 2001, 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 was also requested to submit evidence establishing her qualifying residence and physical presence in the United States. The applicant, in response, provided documentation relating to her residence and physical presence in the United States. The applicant also provided a photocopy of her employment authorization card issued pursuant to an asylum application, which expired on August 6, 1998.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on November 9, 2001.

On appeal, counsel asserts that the applicant initially registered for TPS in June 2000. Counsel provides a photocopied Form I-765, Application for Employment Authorization, dated June 1, 2000, and correspondence dated July 26, 2000, from the Vermont Service Center, rejecting the Form I-765 as it was not filed with the required fee.

These documents, however, only serve to establish that either in June or July 2000 the applicant attempted to file a Form I-765. The documents neither imply nor affirm that a TPS application had been filed in 2000. Moreover, an examination of CIS records fail to disclose any evidence of this applicant having previously filed a TPS application either during the initial registration period or in June 2000. Assuming, arguendo, a TPS application had been filed in June 2000, the applicant still would not be eligible for the benefit being

sought as a final decision of the applicant's Form I-589 application and voluntary departure had been rendered by the immigration court on January 16, 1998, eleven months prior to the initial registration period of January 5, 1999, through August 20, 1999.

The documents submitted to establish the applicant's qualifying residence and physical presence in the United States does not mitigate her failure to file a TPS application within the initial registration period. The applicant has not submitted any credible evidence to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS will be affirmed.

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.