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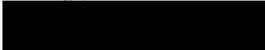


U.S. Citizenship
and Immigration
Services

MI



FILE:



[SRC 04 071 53980]

Office: TEXAS SERVICE CENTER

Date:

APR 19 2005

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 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 had: 1) continuously resided in the United States since December 30, 1998; and 2) been continuously physically present in the United States since January 5, 1999.

On appeal, the applicant submits additional evidence and resubmits documents that had previously been entered into the record.

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.

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. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. 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 initial TPS application with Citizenship and Immigration Services (CIS), on January 12, 2004.

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 January 28, 2004, the applicant was requested to submit evidence establishing her continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States since January 15, 1999. The applicant was also requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). In addition, the applicant was requested to submit photo identification and evidence of her nationality. The applicant, in response, provided photocopies of the following documentation:

1. Her Honduran national identity card issued on August 10, 2000;
2. An optometrist prescription in the name [REDACTED] dated "4/15/99;" and,
3. Four Western Union money transfer receipts all dated in 1999, that bear no evidence of having been paid.

The director determined that the applicant had failed to submit sufficient evidence to establish her continuous residence and continuous physical presence in the United States during the requisite periods, and denied the application on March 2, 2004. The director specifically noted that CIS records reflect that the applicant was apprehended by the United States Border Patrol while attempting entry into the United States at or near Brownsville, Texas, and therefore, the applicant had not established her residence and physical presence in the United States during the dates specified by the Attorney General for Hondurans to receive TPS benefits.

On appeal, the applicant states that she would like to be given "the [o]ppportunity to continue being legal in this country in which with a lot of difficulty [she has] lived here without having the [o]ppportunity of being employed and also given the chance to pay [her] taxes." The applicant states that she has been living in the United States since "1998." In support of the appeal, the applicant submits photocopies of the following documentation:

1. Two Tele-Giros America, Inc., receipts dated "9-1-99" and "7-28-99;"
2. Seven receipts all dated in 1999, of which three indicate they are for "rent;" and,
3. Another copy of Number 2 above.

The applicant has not provided any explanation for how she obtained these documents dated in the years prior to the date she was apprehended by the United States Border Patrol. In addition, the applicant has not submitted any evidence to establish her qualifying continuous residence or continuous physical presence in the United States for the years 2000 through the filing date of the application in 2004. It is noted that the record includes a Notice to Appear dated June 14, 2002, issued at Brownsville, Texas, placing the applicant in removal proceedings at Los Angeles, California, following her apprehension by the United States Border Patrol at or near Brownsville, Texas, on June 14, 2002. According to the records pertaining to that apprehension, the applicant told immigration officers that she and her sister had left Honduras on April 15, 2002, by commercial bus en route to the United States. The applicant also stated that her father lived in California. The applicant made no claim of having previously entered the United States. Further, on the TPS application the applicant claims her date of entry as "1-10-1997" and certified under penalty of perjury that she had not previously been under immigration proceedings.

In conclusion, the evidence of record reflects that the applicant entered the United States on or about June 14, 2002. The evidence does not, however, substantiate that the applicant resided in the United States prior to the June 14, 2002 entry, and that any absence was brief, casual or innocent. She has, thereby, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, that applicant also failed to establish her eligibility for late registration. To qualify for late registration, the applicant must provide evidence that during the initial registration period she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for late initial registration. 8 C.F.R. § 244.2(g). The applicant has not submitted any evidence to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2), and the application must also be denied for this reason.

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.