



U.S. Citizenship
and Immigration
Services

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FILE:



[SRC 04 153 54065]

OFFICE: TEXAS SERVICE CENTER

DATE: **AUG 01 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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. The application is now before the Administrative Appeals Office on appeal. The case will be remanded for further consideration and action.

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 after determining that the applicant had failed to establish her eligibility for late initial registration.

On appeal, the applicant submits a statement. The applicant does not submit any additional evidence in support of the appeal. It is noted that on the Form I-290B, Notice of Appeal, the applicant checked all of the boxes, indicating that she: was not submitting additional evidence; was submitting evidence with the appeal form; would be submitting additional evidence or a brief within 30 days; and, that she needed additional time to submit evidence or a brief. To date, additional evidence has not been received, and the record will be considered complete.

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 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.

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 June 1, 2004.

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 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 June 14, 2004, 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 continuous residence and continuous physical presence in the United States during the requisite periods. In addition, the applicant was requested to submit photo identification, or a national identity document from her country of origin bearing a photograph and/or fingerprint, as well as a copy of her current driver's license. The applicant was also notified that she had not appeared for fingerprinting as scheduled on June 22, 2004, and that she would have to be fingerprinted before her application could be considered.

The applicant, in response, provided photocopies of: a notarized letter dated July 15, 2004, stating that the applicant worked two days a week for the year 1999, in the home of [REDACTED] a notarized character reference dated July 13, 2004; two Gigante Express mailing envelopes dated on an illegible date in 1999 and September 5, 2000; and, information relating to the applicant's mother, consisting of her birth certificate, Social Security Card, a partial copy of her Form I-821, Application for Temporary Protected Status, and her Employment Authorization Document (EAD) reflecting TPS approval under Category A12, with validity from May 19, 2003 through January 5, 2005. The applicant also complied with fingerprinting requirements.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on August 9, 2004.

On appeal, the applicant states that she entered the United States in 1998, and would like her case to be reviewed. The applicant does not submit any additional evidence in support of the appeal.

The applicant submitted evidence that her mother received approval of her TPS application, in the form of her mother's Employment Authorization Document (EAD) reflecting TPS approval under Category A12, with validity from May 19, 2003 through January 5, 2005. The applicant submitted evidence of her date of birth and of her relationship to her mother. The record indicates that the applicant was a child of an alien currently eligible to be a TPS registrant. Therefore, the applicant has submitted sufficient evidence to establish that she qualifies for late initial registration, as the child of an alien currently eligible to be a TPS registrant, a criteria for late registration described in 8 C.F.R. § 244.2(f)(2)(iv). Thus the only reason stated by the director for denial has been overcome.

However, the application may not be approved at this time. The applicant has not submitted sufficient evidence to establish her continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States since January 5, 1999, as described in 8 C.F.R. § 244.2(b) and (c). The regulations do not provide that character references from acquaintances alone may establish an applicant's continuous residence and continuous physical presence in the United States during the requisite periods. Other than the two notarized letters from acquaintances, the only other evidence submitted consists of two Gigante Express envelopes. On the 1999 envelope, the applicant's name appears in different typeface from that of the address, and on the September 5, 2000 envelope, the applicant's name appears to have been added. The applicant claims to

have lived in the United States since 1998; it is, therefore, reasonable to expect the applicant to submit evidence of the types identified in 8 C.F.R. § 244.9.

In addition, the applicant has not submitted sufficient evidence of her identity and nationality. The applicant was requested to submit photo identification, or a national identity document from her country of origin bearing a photograph and/or fingerprint, as well as a copy of her current driver's license. The applicant failed to submit these documents.

For these reasons, the case will be remanded to the director for further consideration and action. The director may request any additional evidence necessary to determine the applicant's eligibility for TPS, and permit the applicant time to respond.

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 remanded for further consideration an action consistent with the above.