



U.S. Citizenship
and Immigration
Services

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: 2/2/05
[WAC 03 117 52933]

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.

Handwritten signature of Robert P. Wiemann in black ink.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 brief and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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. The record reveals that the applicant filed her application with Citizenship and Immigration Services (CIS) on March 4, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, 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 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 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 October 7, 2003, 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 a photo identification document to establish her identity and evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant, in response, provided evidence relating to her residence and physical presence in the United States, a photocopy of her Honduran national identity document (cedula), and a photocopy of her Honduran birth certificate with English translation.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on November 13, 2003.

On appeal, counsel for the applicant states that the applicant failed to apply for TPS during the initial registration period for Hondurans because "she was never aware of her eligibility for TPS." Counsel further states, "[t]he availability of TPS for Honduran nationals was never, as far as applicant knew, advertised or announced on radio, television, newsprint or any other communications media."

Counsel's assertions on appeal are incorrect. The designation of Honduras for TPS was widely publicized by the Immigration and Naturalization Service (now CIS), and also by private social service organizations within the Hispanic community in this country, and many Hondurans applied for, and were granted, TPS during the initial

registration period. 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). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Although not addressed by the director, the record indicates that the applicant was arrested in Santa Ana, California, on November 2, 2002, and charged with one count of second-degree burglary in violation of section 459-460(b) PC, and one count of grand theft in violation of section 487(a) PC, a misdemeanor. On November 5, 2002, the applicant pled guilty to both charges in the Superior Court of California, County of Orange, Central Justice Center. The record contains a document from the Superior Court of California, County of Orange, indicating that both convictions were subsequently expunged on November 25, 2003. However, Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not vacate a conviction on the *merits* are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999). The applicant is ineligible for TPS due to her record of two misdemeanor convictions under 8 C.F.R. § 244.4(a). Therefore, the application also must be denied for this reason.

While the issue of the applicant's inadmissibility was not raised by the director, the applicant is also ineligible for TPS due to his inadmissibility under section 212(a)(2)(A)(i)(I) of the Act as an alien who has been convicted of two misdemeanor crimes involving moral turpitude. Therefore, the application also must be denied for this reason. There is no waiver available for inadmissibility under this section of the Act.

It is noted that the applicant was interviewed by officers of the Immigration and Naturalization Service (now Immigration and Customs Enforcement) on November 4, 2002, at the Orange County Jail. She was issued a charging document and placed in removal proceedings. To date, no removal hearing has been held pending the outcome of the applicant's appeal from the denial of her application for TPS.

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.