



U.S. Citizenship
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FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE: AUG 26 2005

[EAC 03 192 50506]

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont 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 argues that the applicant is eligible for late registration because she has been living in the United States with an overstayed non-immigrant visa since about July 10, 1998.

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 from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed her application with Citizenship and Immigration Services (CIS) on June 9, 2003.

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 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 July 17, 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 evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation relating to her residence and physical presence in the United States.

The director determined that the applicant had failed to establish that she was eligible for late registration and denied the application on August 20, 2003. The director noted that the applicant submitted documentation with her initial filing claiming that she was eligible for late registration as an applicant for adjustment of status. The director determined that the applicant did not qualify for late registration on this basis because her adjustment of status application was filed on March 26, 2002, subsequent to the requisite registration period.

On appeal, counsel reasserts the applicant's claim of eligibility based upon her presence in the United States on a overstayed non-immigrant visitor's visa since July 10, 1998.

The record indicates that the applicant was previously admitted to the United States on July 10, 1998, as a nonimmigrant B-2 visitor, with stay authorized to October 9, 1998. The applicant remained in the United States in unlawful status after the expiration of her authorized stay.

The record further indicates that the applicant subsequently traveled to Honduras on March 25, 1999, and returned to the United States on May 26, 1999. Upon her arrival with her three-year-old nephew at Texas International Airport in Houston, Texas, the applicant was questioned by immigration officers, as a possible overstay. The applicant admitted under oath before immigration officers that she had obtained a fraudulent backdated Honduran entry stamp while she was in Honduras to conceal the fact that she had unlawfully remained in the United States beyond the expiration of her authorized stay on October 9, 1998, and that she had unlawfully worked in the United States without authorization from the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS) during her previous stay. The immigration officers found that the applicant was inadmissible under section 212(a)(7)(A)(i)(1) as an immigrant not in possession of a valid immigrant visa and also under section 212(a)(6)(C)(i) as an alien who attempted to obtain admission into the United States through fraud or willful misrepresentation of a material fact. At the conclusion of her interview, the applicant withdrew her application for admission into the United States, and her nonimmigrant B-1/B-2 visitor's visa was cancelled. According to the record, the applicant, in lieu of being detained, agreed to report to immigration authorities on May 27, 1999, for her flight back to Honduras. The record of proceedings shows that the applicant failed to report to the Immigration office at Texas International Airport in Houston, Texas for her scheduled return flight to Honduras.

In order to qualify for late initial registration as an alien who was in nonimmigrant status during the initial registration period for Honduras, the applicant was required to apply for late registration within a 60-day period immediately following the expiration of her authorized stay as a nonimmigrant B-1/B-2 visitor. The applicant did not file her TPS application until June 9, 2003. Therefore, she does not qualify for late registration on this basis.

The applicant, on appeal, does not refute the director's conclusion that she does not qualify for late registration based on her pending adjustment of status application because the application was filed on March 26, 2002, subsequent to the initial registration period for Hondurans. Therefore, the director's decision on that issue will be affirmed.

The applicant submitted evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file her Form I-821, Application for Temporary Protected Status, within 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 TPS will be affirmed.

Beyond the decision of the director, the applicant has failed to submit sufficient evidence to establish continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999. The record of proceedings demonstrates and the applicant has admitted to leaving the United States in March of 1999 and returning from Honduras on May 26, 1999. For this additional reason, the applicant's TPS application will be denied.

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.