

U.S. Department of Homeland Security
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U.S. Citizenship
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MM

[REDACTED]

FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: AUG 26 2005
[EAC 04 010 50789]

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.

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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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 reasserts the applicant's eligibility for TPS.

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 CIS on August 27, 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 January 20, 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, in response, provided documentation relating to her TPS application that was denied by the director on June 30, 2000. The applicant also submitted a copy of articles written in Newsday that discuss [REDACTED] fraudulent activities and subsequent criminal prosecution. The applicant also submitted 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 March 12, 2004.

On appeal, counsel contends that the applicant is eligible for late registration in that she had a TPS application pending that was submitted by [REDACTED] who was later tried and convicted of fraud. Counsel further contends that the TPS application was pending during the initial registration period and is considered an application for "any relief from removal," thus coming within the guidelines of 8 C.F.R. § 244.2(f)(2)(ii) as a qualifier for late registration. Counsel also contends that the applicant relied to her detriment upon [REDACTED] [REDACTED] comply with Citizenship and Immigration Services (CIS) application procedural requirements, including the submission of documents and other evidence, in a timely fashion.

Contrary to counsel's assertions made on appeal, while Temporary Protected Status may confer benefits that temporarily delay the alien's removal, the temporary benefits of Temporary Protected Status do not equate to "relief from removal" obtained through an adjustment of status, cancellation of removal, discretionary relief, recommendation against deportation, or suspension of deportation.

Taking counsel's argument to its logical extreme, an alien who had abandoned his or her initial application could file a new application within 60 days after the first TPS application denial, abandon the new application, and perpetuate the application process indefinitely; thus enjoying the benefits of Temporary Protected Status without ever successfully completing the application process. The provisions for late registration detailed in 8 C.F.R. § 244.2(f)(2) were not created to allow aliens who had abandoned their initial applications to circumvent the normal application and adjudication process. Rather, these provisions were created to ensure that Temporary Protected Status benefits were made available to aliens who did not register during the initial registration period for the various circumstances specifically identified in the regulations. Having an application for TPS pending during the initial registration period does not render an alien eligible for late registration under 8 C.F.R. § 244.2(f)(2).

Although counsel asserts that the applicant relied to her detriment upon the services [REDACTED] therefore, should be allowed to qualify for late registration of subsequent TPS applications, a perpetual application process is not conducive to the strictures of the CIS regulations. CIS is not responsible for the inaction on the part of the applicant and/or individuals she chooses to rely upon to process her TPS application. Furthermore, there is no evidence contained in the record to show that Santiago Taveras submitted a Form G-28 indicating that he would be representing the applicant. All correspondence was sent by CIS to the applicant at her address, [REDACTED]. There is no evidence contained in the record to show [REDACTED] anything other than the initial preparer of the TPS application that was received by CIS on March 22, 1999. Counsel's statements made on appeal have been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above. It is noted that CIS records indicate that the current TPS application was filed more than three years after the initial TPS application was denied by the director on June 30, 2000. The applicant has not submitted sufficient 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 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.

Beyond the decision of the director, the applicant has failed to submit sufficient evidence to establish her qualifying continuous residency in the United States since December 30, 1998, and her continuous physical presence in the United States since January 5, 1999 as required by the regulations at 8 C.F.R. §§ 244.2(b) and (c).

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.