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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: TEXAS SERVICE CENTER

Date: FEB 07 2005

[SRC 01 243 54427]

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.

Cindy M. Gomez for

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 was eligible for late registration. The director also determined that the applicant had not established her continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant submits a statement and additional evidence in support of the appeal. The applicant also resubmits documentation 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 the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on June 26, 2001.

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).

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed her application after the initial registration period had closed. 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. See 8 C.F.R. § 244.2(g).

On February 12, 2002, 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 during the requisite periods. The applicant, in response, provided two receipts dated in October and December 1998, a money transaction dated December 30, 1998, and an affidavit from Jesus Bonilla attesting that the applicant came to the United States on February 22, 1998.

In a second request for evidence dated August 12, 2003, the applicant was again requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2), and evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. In addition, the applicant was requested to submit photo identification, such as a driver's license or passport. In response, the applicant submitted photocopies of the following documentation:

1. Her Texas Driver License with expiration of April 2, 2010;
2. An undated City of Houston, Health and Human Services Department, card;
3. A City of Houston, Health and Human Services Department, Consultation/Referral form dated October 11, 2000, for an ultrasound;
4. A Marriage License and Certificate of Marriage, Harris County, Texas, indicating that the applicant and [REDACTED] were married on June 15, 2001;
5. A City of Houston, Texas, Birth Certificate, for a child born to her on January 13, 2001;
6. Honduran Birth Certificates, without English translation, indicating that the applicant and [REDACTED] are parents of two children born in Honduras in 1992 and 1993;
7. An Immunization Record, on which the applicant's name is crossed out and [REDACTED] name was added; and,
8. Additional copies of the two receipts dated in October and December 1998, and money transaction dated December 30, 1998, that were previously submitted.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on September 12, 2003.

On appeal, the applicant states that she legally married her husband on "June 8, 2001" in Houston, Texas, and adds that they had lived in a common-law marriage since approximately 1990, and had three children together. She states she does not understand why TPS has been denied when she is a beneficiary of her husband's TPS. In support of the appeal, the applicant resubmits numbers 3, 4, and 5 above. The applicant also submits an affidavit dated October 6, 2003, from [REDACTED] attesting that he has known the applicant "since June 1999 when

she came to Houston, Texas," and an affidavit dated October 8, 2003, from [REDACTED] attesting that he has known the applicant since May 29, 1999.

It is noted that with her initial application, the applicant submitted a photocopy of her husband's Employment Authorization document (EAD), under [REDACTED] indicating that he was approved for TPS benefits under Category A12, with validity from August 25, 2000 through July 5, 2001. While it appears that the applicant is married to a TPS registrant, their marriage took place on June 15, 2001, in Harris County, Texas. Therefore, she has not met the requirements of 8 C.F.R. § 244.2(f)(2), which indicates that the criteria making one eligible for late registration must have existed during the initial registration period.

The applicant states on appeal that she and her husband formerly lived as common-law spouses since approximately 1990. The record also includes an undated statement submitted with the initial application and signed by her husband, which states that he has lived together with the applicant for ten years and lists the children born in Honduras. Under the provisions of the Texas Family Code, a common-law marriage may be shown by establishing three factors: (1) an agreement by the parties to be married, (2) living together in Texas after the agreement is made, and (3) representation to others by the parties that they are married. *Matter of Garcia*, 16 I&N Dec. 623, 624 (BIA 1978). The applicant has failed to provide any evidence to establish that any of these factors have been met prior to the legal marriage that took place on June 15, 2001. Therefore, this attestation of informal marriage cannot be accepted for purposes of this application.

The applicant has not submitted sufficient evidence to establish that she has met the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish her eligibility for late registration will be affirmed.

The second issue in this proceeding is whether the applicant has established 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 stated above, the applicant was requested on February 12, 2002, and August 12, 2003, to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the items listed above at numbers 1 through 7.

The director stated that documentation in the record indicated that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods and denied the application.

On appeal, the applicant submits an affidavit dated October 6, 2003, from [REDACTED] attesting that he has known the applicant "since June 1999 when she came to Houston, Texas," and an affidavit dated October 8, 2003, from [REDACTED] attesting that he has known the applicant since May 29, 1999.

It is noted that the regulations at 8 C.F.R. § 244.9 do not expressly provide for personal affidavits as suitable evidence to establish continuous residence and continuous physical presence in the United States. Both requests for additional evidence informed the applicant of the types of evidence that could be submitted to establish her continuous residence and continuous physical presence in the United States. The applicant did not submit sufficient evidence for the initial portion of the required periods. She has, therefore, also 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 on this ground will also be affirmed.

It is noted that on the applicant's Form I-821, Application for Temporary Protected Status, the applicant has certified under penalty of perjury that she has not been under immigration proceedings. The record however, includes the Federal Bureau of Investigation (FBI) fingerprint results report, pertaining to the applicant's fingerprints. This report reflects the apprehension of the applicant by the United States Border Patrol while attempting entry into the United States at or near Del Rio, Texas, on May 14, 1999. At the time of this apprehension, the applicant gave her name as [REDACTED] and gave her date of birth as "April 2, 1982." The record associated with this case, [REDACTED] contains a Warrant of Removal issued at San Antonio, Texas, on October 19, 2001, based upon the final order of removal issued by the Immigration Judge, San Antonio, Texas, on August 15, 2001.

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.