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U.S. Citizenship
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Services

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FEB 10 2005

FILE:

Office: TEXAS SERVICE CENTER Date:

[SRC 05 199 52430]

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 N. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, on December 5, 2003. On February 2, 2004, the applicant filed a late appeal. On February 18, 2004, the service center director noted that the appeal was late, and determined that the submitted documentation did not warrant consideration as a motion to reopen or reconsider, and did not overcome the denial. Subsequent to this decision, the applicant filed a motion to reopen on March 4, 2004, that is now before the Administrative Appeals Office (AAO). The motion will be dismissed.

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 because the applicant failed to establish she was eligible for late registration. The director also determined that the applicant had failed to establish her continuous physical presence in the United States during the requisite period. In addition, the director noted that the applicant had failed to submit photocopies of her birth certificate, with English translation, and her current driver's license.

The applicant filed an appeal on February 2, 2004. In that appeal, the applicant stated that she has been living in the United States since the year 1997. She stated that she would not like to lose her work permit. The applicant further stated that due to lack of information and fear of being deported she did not apply at the time of the initial registration period. The applicant also asked that her case be reopened and that she be given: "the opportunity to be legal in this country in which with a lot of difficulty I have lived here without having a better opportunity in employment and also to pay my taxes [sic]." The applicant submitted additional evidence in support of her appeal, including photocopies of: her birth certificate with English translation; her Honduran passport issued on January 12, 2004, by the Consulate General, Miami, Florida; an Urgente Express receipt dated July 3, 1999; a Bell South statement dated August 14, 1999, and, a PrimeCo statement dated September 7, 1999. The applicant also resubmitted three medical receipts dated in 1999.

The director properly treated the untimely appeal as a motion to reopen and reconsider and found that the motion did not meet the applicable requirements under 8 C.F.R. § 103.5(a)(2) or (3). The director stated that the applicant had failed to provide any additional evidence that she met the requirements for late initial registration. The director also stated: "A review of your file reveals that you did not enter the United States until May 16, 2001," and, therefore, concluded that the applicant also had not met the requirements for continuous residence and continuous physical presence in the United States.

In response to the director's decision of February 18, 2004, the applicant submitted a subsequent motion to reopen on March 4, 2004.

In this motion, the applicant reiterates her request that her case be accepted and that she be given: "the [o]ppportunity to continue being legal in this country in which with a lot of difficulty I have lived here without having the [o]ppportunity of being employed and also given the chance to pay my taxes." The applicant also reiterates that she did not have the correct information and feared being deported. She now states that she has "truly been living in this country since 1998." The applicant also asks for a new appointment to complete her fingerprints. The applicant does not submit any additional evidence in support of her claim.

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

A motion to reconsider must state the reason for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy and must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

In this case, the motion does not state new facts to be proved at the reopened proceeding, and is not supported by affidavits or other documentary evidence, in accordance with the regulatory requirements as provided at 8 C.F.R. § 103.5(a)(2).

It is noted that the applicant failed to submit evidence on motion 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. The record includes Western Union receipts dated in 1997 and 1998, and documentation dated in the year 1999. The applicant, however, did not submit any evidence for the years after 1999, through the date of issuance of her Honduran passport, given by the Consulate General, Miami, Florida, on January 12, 2004. It is also noted that the applicant's Honduran national identity document indicates that it was issued to her in Honduras on July 18, 2001. The applicant did not explain how she obtained this document in Honduras after her stated date of entry into the United States. It also is noted that the records of CIS reflect that an individual with the applicant's name, nationality, and date of birth entered the United States as a B-2 visitor on December 1, 2002, and re-entered the United States on a B-1 visa on June 13, 2003. While the director's finding that the applicant "did not enter the United States until May 16, 2001," is not explicitly contained in the record, based upon the foregoing discussion, the applicant also has not established her continuous residence and continuous physical presence in the United States during the requisite periods, as required under 8 C.F.R. § 244.2(b) and (c).

For these reasons, the submissions do not meet the requirements of a motion to reopen, and the motion must be dismissed.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden.

ORDER: The motion is dismissed.