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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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JUN 06 2005

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER Date:

[SRC 02 234 34520]

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:

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.

Robert P. Wiemann

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 (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be 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 that she is eligible for late initial registration.

On appeal, the applicant submits a statement and additional evidence. It is noted that the appeal was received more than thirty days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). While such an appeal would normally be rejected, due to the circumstances of the case, the appeal will be examined.

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. 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 (INS), now Citizenship and Immigration Services (CIS), on July 8, 2002.

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).

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. 8 C.F.R. § 244.2(g).

On April 18, 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, in response, provided photocopies of the following documentation:

1. The biographic page of her Honduran passport issued on May 25, 2000, by the Consulate General, Houston, Texas;
2. Her State of Texas identification card issued in 1995, with validity through November 26, 1999;
3. Her State of Texas identification card issued in 2000, with validity through November 26, 2005;
4. Courier receipts that are all dated in 1997; and,
4. CIS receipt notices.

With the initial application, the applicant had also previously submitted a photocopy of a 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 May 12, 2003.

On appeal, the applicant states that she did not apply during the initial registration period because she was expecting a child, and because she did not have her own birth certificate and was waiting for someone to bring it to her from her native country. She states that her application was subsequently rejected because it was submitted late. She states that she then resubmitted her materials in 2002. In support of the appeal, the applicant submits photocopies of the following documentation:

1. A CIS receipt notice dated May 12, 2003, indicating approval of her TPS application filed in July 2002, with validity from May 12, 2003 through July 5, 2003;
2. A money order dated May 30, 2003, for her re-registration application;
3. CIS receipt notices, money orders, and United States Postal Service receipts for her TPS and employment authorization applications all dated in 2002 and 2003;
4. A United States Postal Service receipt stamped June 6, 2000, and undated letter from the Texas Service Center indicating that her TPS application was being returned;
5. A State of New York birth certificate for a child born to her on February 2, 1999;

6. A patient identity card dated "10/02/00" from the maternity clinic, Centro de Salud de New Cassel-Westbury, Westbury, New York;
7. Her child's immunization record reflecting dates in 1999, 2000 and 2001;
8. A New York State Benefit Identification Card for her child;
9. Original printouts of the previously submitted courier receipts dated in 1997; and,
10. Additional copies of her birth certificate and passport.

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. It is noted that the attempted filing in June 2000, also was outside of the initial registration period. The applicant states that she did not file during the initial registration period because she was pregnant and also was awaiting the delivery of her own birth certificate from her native country. These reasons do not fall within the allowable provisions for late registration. 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.

It is noted that one of the CIS receipt notices, described above at Number 1, is dated the same date as the denial notice, May 12, 2003, but indicates approval of the TPS application with validity from May 12, 2003 to July 5, 2003, of the very same TPS application for which the applicant also received a denial notice. This approval notice was issued in error; CIS records reflect that the action of ordering the approval notice was canceled, although not in sufficient time to avoid the mailing received by the applicant.

The record also contains a Federal Bureau of Investigation (FBI) fingerprint results report, pertaining to the applicant's fingerprints. This report reflects that the applicant was apprehended on October 5, 1994, by the United States Border Patrol while attempting entry into the United States at or near Douglas, Arizona. The applicant was subsequently placed in deportation proceedings under the record number [REDACTED]. Review of this A-file record reflects that, at the time of her apprehension by the United States Border Patrol, the applicant claimed her nationality as El Salvadoran. She indicated that both of her parents were El Salvadoran nationals, and that her place of birth and permanent residence was located in Miangera, La Union, El Salvador. The applicant claimed to have never been issued a passport, visa, or travel document from her country of birth, and was not in possession of any identification documents. Although the applicant claimed her nationality as El Salvadoran when first encountered by immigration officers, on her TPS applications, however, the applicant has indicated that she is a native and citizen of Honduras. The applicant has not conclusively established her nationality as required under 8 C.F.R. § 244.2(a).

The applicant's record under [REDACTED] reflects that the applicant was released on bond to reside with her relative in Portchester, New York. On March 23, 1995, the applicant failed to appear for her hearing in deportation proceedings, and received, in absentia, a final order of removal to El Salvador by the Immigration Judge, Phoenix, Arizona. This record also contains a Warrant of Deportation issued at Tucson, Arizona, on April 6, 1995, based on the immigration judge's final order of removal.

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.