

Administrative Appeals Office
Department of Homeland Security
Washington, DC 20529

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



U.S. Citizenship
and Immigration
Services

MI



FILE: [REDACTED]
[EAC 04 082 50838]

OFFICE: VERMONT SERVICE CENTER

Date: OCT 05 2008

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.

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 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 was eligible for late registration. The director also found that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant submits a statement.

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.

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.

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 period.

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 January 15, 2004.

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 Citizenship and Immigration Services (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 at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

On February 10, 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 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 she was eligible for late registration and denied the application on March 25, 2004.

On appeal, the applicant states that she was afraid to apply for TPS during the initial registration period for Hondurans because she was afraid she might be deported. She further states that he didn't have enough money to pay the application fees during that period.

However, these statements do 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 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.

The applicant claimed on her TPS application that she first entered the United States on June 28, 1998. In support of her application, she submitted the following:

1. an affidavit from [REDACTED] stating that he has known the applicant since April 1999;
2. an affidavit from [REDACTED] stating she has known the applicant since 1999;
3. an affidavit from [REDACTED] stating she has known the applicant since March 2000;
and,
4. an affidavit from [REDACTED] stating that he has known the applicant since 2000.

As stated above, the applicant was requested on February 10, 2004, to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the following:

5. an affidavit from [REDACTED] stating she has known the applicant since August 1999;
6. an affidavit from [REDACTED] stating he has known the applicant since May 1999;

7. an affidavit from [REDACTED] stating he has known the applicant since March 1999; and,
8. an affidavit from [REDACTED] stating he has known the applicant since January 1999.

The director concluded 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 states that she does not have any contemporaneous evidence such as rent receipts or medical receipts to establish her qualifying continuous residence and continuous physical presence in the United States because she did not have lawful status in the United States and could not rent an apartment or work legally.

The applicant claims to have lived in the United States since June 28, 1998. However, the record contains information that contradicts the applicant's claim. The record reveals that the applicant was apprehended by the United States Border Patrol on August 25, 1999, near Laredo, Texas. The applicant identified herself to the Border Patrol as [REDACTED] a citizen of Honduras. She told the officers that she left her home in [REDACTED] Honduras, on June 25, 1999, and entered Mexico by bus on June 28, 1999. She further stated that she traveled through Mexico by train and entered the United States from [REDACTED] Mexico, on August 22, 1999.

The applicant has not provided any explanation for this contradiction in her claimed date of entry into the United States. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

Additionally, the applicant has submitted only affidavits to establish her continuous residence and continuous physical presence in the United States during the requisite periods. It is reasonable to expect that the applicant would have some type of contemporaneous documents to corroborate these affidavits; however, no such evidence has been provided. Without corroborative evidence, affidavits are not sufficient to establish an applicant's qualifying continuous residence and continuous physical presence in the United States. Moreover, affidavits are only specifically listed as acceptable evidence of employment and membership in organizations such as churches or labor unions as described in 8 C.F.R. § 244.9(a)(2)(i) and (v).

The applicant has not submitted sufficient credible evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. She has, therefore, 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 TPS on these grounds will also be affirmed.

It is noted that the applicant was ordered deported in absentia by an Immigration Judge in San Antonio, Texas on October 31, 2000. On December 11, 2000, the District Director, San Antonio, issued a Form I-205, Warrant of Removal/Deportation. To date, the warrant remains outstanding.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.