



U.S. Citizenship
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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: AUG 01 2006
[WAC 05 095 74862]

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The record reveals that the applicant filed an initial TPS application on September 5, 2000, under Citizenship and Immigration Services (CIS) receipt number WAC 01 149 52652. The director denied that application on July 26, 2005, because the applicant had failed to respond to a request dated May 15, 2002, to submit: (1) evidence of her nationality and identity; (2) photo identification; and (3) evidence to establish her qualifying continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 3, 2005, and indicated that she was re-registering for TPS.

The director denied the re-registration application on July 23, 2005, because the applicant's initial TPS application had not been granted; therefore, the applicant was not eligible to apply for re-registration for TPS. The applicant appealed this decision on August 9, 2005. She states that the director indicated in a letter that she is under political asylum (Form I-589); however, she filed a TPS application as a Honduran national, she has previously submitted proof that she is Honduran, and that she has resided in the United States since prior to 1998 and has "stayed here since." It is noted that the director incorrectly stated on Form I-797C, Notice of Action, dated July 26, 2005, that the applicant's Form I-765, Application for Employment Authorization, filed on January 5, 2005, was based on a pending Form I-589, Request for Asylum in the United States, but that no record was found to establish that the applicant has a pending application for asylum. As maintained by the applicant, the Form I-765 was based on her application for TPS rather than on an application for asylum.

Upon review of the record of proceeding, and as previously addressed, it is noted that the initial TPS application was pending when the director denied the re-registration application. The applicant filed her initial application on September 5, 2000; she was requested on May 15, 2002, to submit additional evidence. There is no evidence in the record that the applicant responded to the director's request for evidence. During the pendency of the initial application, the applicant applied for re-registration for TPS on January 3, 2005. The director denied the re-registration application on July 23, 2005, because the applicant had not been granted TPS. The applicant filed Form I-290B appealing the denial of the re-registration application. The applicant, however, did not file a motion to reopen the director's decision of July 26, 2005, denying the initial TPS application based on abandonment.

A remand of this case to the director based on a premature denial of the re-registration application would not overcome the denial of the applicant's initial TPS application, as the record still is devoid of any evidence to establish that the applicant has met the criteria for continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

It is noted that the director's decision does not explore the possibility that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 § 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 condition described in paragraph (f)(2) of this section.

The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The record reveals that the applicant filed the current application with CIS on January 3, 2005.

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 he or 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 his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Therefore, the application also must be denied for this reason.

Beyond the decision of the director, it is noted that the applicant's initial TPS application indicates that the applicant's date of entry into the United States was March 2, 2000. Additionally, Form I-213, Record of Deportable/Inadmissible Alien, dated March 2, 2000, and Form I-862, Notice to Appear, also dated March 2, 2000, both indicate that the applicant claimed to have entered the United States without inspection near Laredo, Texas, on March 2, 2000. In removal proceedings held on November 21, 2002, it was noted that the applicant claimed she departed from the United States and remained in Honduras for three years prior to her reentry into the United States in 2000. The Immigration Judge administratively closed removal proceedings based on the filing of a TPS application by the applicant. Based on the applicant's three-year absence from the United States, the applicant, therefore, could not have met the requirements for continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999, as described in 8 C.F.R. § 244.2(b) and (c). Additionally, it is noted that the applicant filed her initial TPS application on September 5, 2000, after the initial registration period for Hondurans (from January 5, 1999 to August 20, 1999) had closed. There is no evidence in the record that the applicant fell within the provisions described in 8 C.F.R. § 244.2(f)(2). Therefore, the application will also be denied for these reasons.

The Federal Bureau of Investigation fingerprint results report shows that on June 13, 1995, in Los Angeles, California, the applicant, under the name [REDACTED] was arrested for shoplifting. However, the final court disposition of this arrest is not included in the record of proceeding. CIS must address this arrest and/or conviction in any future decisions or proceedings.

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 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.