

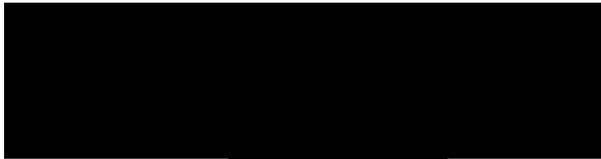


U.S. Citizenship
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Services

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FILE: [REDACTED]
[WAC 05 091 70338]

Office: CALIFORNIA SERVICE CENTER

Date: APR 10

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, California 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 record reveals that on July 8, 2003, the applicant filed an earlier TPS application under Citizenship and Immigration (CIS) receipt number SRC 03 201 55859. The Texas Service Center Director denied that application on December 24, 2003, because the applicant failed 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 applicant did not file an appeal from the denial decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 30, 2004, and indicated this was an application for re-registration or extension of TPS benefits.

The director denied this application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, the applicant asserts that she is eligible for TPS as the spouse of an alien currently approved as a TPS registrant. In support of the appeal, the applicant submits additional evidence consisting of photocopies of: a news article about reapplying for TPS benefits; and, CIS receipt notices for her January 2005 and July 2003 TPS and employment authorization applications. She also resubmits additional copies of: the Immigration and Nationality Act (INA) Section 244.1 [8 U.S.C. 1254], pertaining to temporary protected status; her State of Florida Marriage Record reflecting her marriage to [REDACTED] in Miami, Florida, on March 15, 2003; the Florida Identification Card of her spouse issued on January 6, 2004; Employment Authorization documents (EAD) issued to her husband under Category A12, with validity from October 24, 2002 through July 5, 2003, and again from January 6, 2004 through January 5, 2005; the Social Security cards for her husband and daughter; and, birth certificates for herself, her husband, and children.

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, she 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 applicant may apply for TPS during the initial registration period, or:

- (f) (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 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 December 30, 2004.

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. 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).

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).

In this case, the applicant's marriage to an alien currently eligible to be a TPS registrant did not occur until March 15, 2003. The marriage was not valid during the initial registration period that for Hondurans ended on August 20, 1999. Therefore, the applicant has not established that she qualifies for late initial registration under the provisions of 8 C.F.R. § 244.2(f)(2). As indicated above, the applicant's previous TPS application also was filed outside of the initial registration period and was denied for this reason. Because the applicant has not established her eligibility for late initial registration, the application also must be denied for this reason.

The applicant also has failed to submit evidence to establish her date of entry into the United States prior to December 30, 1998, 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's passport reflects entry stamps into the United States at Miami, Florida, on September 12, 2002, at PEV on October 20, 2002, and finally again at Miami, Florida, on March 9, 2003. Therefore, the applicant has failed to establish that she has met the requirements under the provisions of 8 C.F.R. § 244.2(b) and (c), and the application must be denied for these reasons.

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.