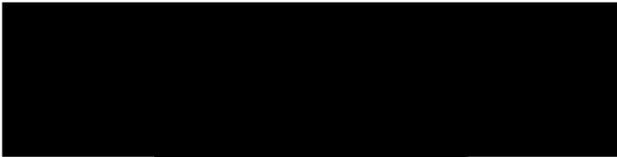


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MI

MAY 08 2006
Date:

FILE: [REDACTED]
[WAC 05 228 87701]

Office: CALIFORNIA SERVICE CENTER

IN RE: Applicant: [REDACTED]

a.k.a. BERTHA MAGDALENA SPENCER-GARCIA

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 (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 record reveals that on June 12, 2002, the applicant filed an earlier TPS application under Citizenship and Immigration (CIS) receipt number SRC 02 199 54413. The Texas Service Center Director denied that application due to abandonment on August 7, 2002, because the applicant failed to timely respond to a request to establish her eligibility for TPS. On July 1, 2002, the applicant had been requested to submit photo identification or a national identity document from her country of origin bearing a photograph and/or fingerprint. She was also requested to submit evidence establishing her: eligibility for late initial registration; continuous residence in the United States since December 30, 1998; and, continuous physical presence in the United States since January 5, 1999. Because the initial application was denied due to abandonment there was no appeal available; however, the applicant could have filed a motion to reopen within 33 days of the date of the decision. The applicant did not file a motion to reopen the previous decision. It is noted that after the denial decision was issued, on August 21, 2002, the applicant submitted a response to the request for additional evidence, noting her new address.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 16, 2005, 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 states that she has sufficient evidence to prove she is eligible for TPS. The applicant does not submit any additional evidence in support of the appeal.

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 to August 20, 1999. The record reveals that the applicant filed the current application with CIS on May 16, 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. 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).

The applicant asserts that she is eligible for late initial registration as the common law spouse of an approved TPS registrant. The applicant submitted an affidavit from [REDACTED] attesting that they have lived together as husband and wife since 1991, have a child born in 1992, and have lived together in the United States since November 15, 1997. The applicant submitted a copy of [REDACTED] Employment Authorization documents (EAD) under record number [REDACTED] Category A12, with validity for successive periods from September 26, 2000, through July 5, 2002. She also submitted a copy of [REDACTED] driver license and several documents in his name. However, the record shows that on her Forms I-821, Application for Temporary Protected Status, the applicant certified under penalty of perjury that she was single. The applicant also certified that she was single when she signed the Forms I-765, Application for Employment Authorization. The submitted copies of [REDACTED] applications also indicate that he is single.

The applicant has failed to explain why she repeatedly certified that she was single if she considered herself to have been in a common law marriage during this time period. Further, the state of Florida, where applicant resides, does not recognize common law marriages entered into after 1968. FLA. STAT. ANN. section 741.211 (2002).

Therefore, 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), and this application also must be denied for this reason.

The applicant failed to submit sufficient evidence to establish her continuous residence since December 30, 1998, and her continuous physical presence in the United States since January 5, 1999. The majority of the documentation is in the name of [REDACTED] with one receipt dated December 2001 in the applicant's name. Therefore, the applicant has not met the requirements under 8 C.F.R. § 244.2(b) and (c), and the application must also be denied for this reason.

In addition, the record contains only a photocopy of a birth certificate, with English translation. The applicant failed to submit photo identification or a national identity document from her country of origin bearing a photograph and/or fingerprint. The birth certificate alone is insufficient to establish the applicant's identity and nationality under the provisions of 8 C.F.R. § 244.9(a)(1). Therefore, the application must also be denied for this reason.

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.