



U.S. Citizenship
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: SEP 07 2006
[LIN 01 238 50524]

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the application will be approved.

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.

On appeal, the applicant asserts her claim of eligibility for TPS late registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 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.

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 in the United States 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, 2007, 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 the instant application with Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on August 3, 2001.

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).

On September 9, 2001, the applicant was requested to submit evidence to establish her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). In addition, the applicant was requested to submit evidence establishing her "residence in the United States since December 30, 1998", and her continuous physical presence in the United States since January 5, 1999. The applicant, in response, provided documentation relating to her continuous residence and continuous physical presence in the United States. On November 26, 2001, the director denied the application because the applicant had failed to establish she was eligible for late registration.

On appeal, the applicant states that she qualifies for TPS late registration because she had an application for adjustment of status pending.

A review of the record of proceedings reflects that the applicant had filed an application for adjustment of status on September 5, 1997, based upon the approval of a Form I-130, Petition for Alien Relative, filed by her United States citizen husband. She was granted Conditional Resident status, but circumstances regarding her Removal of Conditions prevented her spouse from appearing for the interview due to his extended incarceration. The adjustment of status application was denied on December 5, 2003, based upon a denial of the Form I-130. The record fails to indicate how the approved I-130 was subsequently denied as abandoned.

Based on the record, the application for adjustment of status was pending during the initial registration period and the applicant filed the instant application during the time her adjustment of status application was still pending

with the Service. The applicant has submitted sufficient evidence to establish her eligibility for late registration described in 8 C.F.R. § 244.2(f)(2). Therefore, the director's decision will be withdrawn and the application will be approved.

It is noted that the applicant filed subsequent TPS applications on July 22, 2002 [LIN 02 247 50017] and on June 30, 2003, which are still pending with the Service.

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 met this burden.

ORDER: The appeal is sustained and the application is approved.