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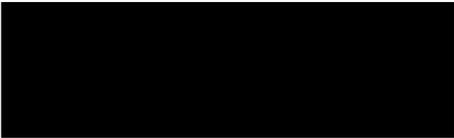
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: DEC 28 2007
[WAC 04 260 50117]

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 director denied the application because the applicant had “failed to register in a timely manner.”

On appeal, the applicant submits a statement and additional evidence.

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 term *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.

The term *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.

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 January 5, 2009, upon the applicant's re-registration during the requisite time period.

The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The record shows that the applicant filed her TPS application on September 20, 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.

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 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 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 director determined that the applicant had failed to establish that she was eligible for late registration and denied the application on November 10, 2004.

On appeal, the applicant asserts that she was exempted from having to register for TPS prior to August 1999. She submits copies of nine Employment Authorization Cards (EAD), three of which are illegible, issued from September 12, 1996 to July 11, 2003, inclusive.

The record shows that on April 26, 1994, the applicant filed Form I-589, Request for Asylum in the United States. During the applicant's interview conducted on July 29, 1994, the Director, Los Angeles Asylum Office, issued a notice of intent to deny the asylum application. The applicant responded to the director's notice on August 11, 1994. The asylum application was denied on November 14, 1994. The applicant was advised on March 3, 1995, that her asylum request was denied because the evidence she provided failed to overcome the basis of the director's notice of intent to deny. The applicant was further advised that any employment authorization that had been issued as a result of having a pending application for asylum would expire 60 days from the date of the notice or on the expiration date of the EAD, whichever period was longer. Form I-221,

Order to Show Cause and Notice of Hearing, was issued on March 3, 1995, and was attached to the director's March 3, 1995 notice of denial. After three attempts to deliver the notices to the applicant, the mail was returned to the Los Angeles Asylum Office as "unclaimed."

Section 239(a)(1) of the Act provides that, in removal proceedings under section 240, written notice (referred to as a "notice to appear") shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or the alien's counsel of record, if any). Section 239(c) of the Act provides that "service by mail under this section shall be sufficient if there is proof of attempted delivery to the last address provided by the alien in accordance with subsection (a)(1)(F)." As noted above, three attempts were made by the Postal Service to deliver the mail to the applicant's last known address. The applicant had failed to provide a change of her address as required.

Despite the denial of the asylum application, the record shows that EADs were continuously issued to the applicant, the latest valid from July 11, 2003 to July 10, 2004. The record further shows that on December 4, 1996, the applicant was issued Form I-512, Authorization for Parole of an Alien into the United States, and upon her reentry into the United States on December 30, 1996, the applicant was paroled into the United States until September 28, 1997, to pursue her asylum application.

The applicant, however, had no asylum application pending at the time the Form I-512 was issued, and that the EADs were erroneously issued. In *Sussex Engineering, Ltd. v. Montgomery*, 825 F.2d 1084 (6th Cir. 1987), the Court of Appeals held that it is absurd to suggest that the Service must treat acknowledged errors as binding precedent. The Service is not required to approve applications or petitions where eligibility has not been demonstrated. See *Matter of M-*, 4 I&N Dec. 532 (A.G. 1952; BIA 1952).

The asylum application was denied on November 14, 1994, and the applicant was advised of this decision on March 3, 1995; therefore, the applicant had no pending application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal that is pending or subject to further review or appeal; nor is the applicant a parolee or has a pending request for reparole. 8 C.F.R. § 244.2(f)(2). It is noted that although the applicant was erroneously issued Form I-512 and was subsequently paroled into the United States, that parole expired on September 28, 1997.

The TPS application was filed on September 20, 2004. The applicant has failed 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 decision to deny the TPS application will be affirmed.

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.