



U.S. Citizenship
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: OCT 01 200

[WAC 05 089 76219]

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 California Service Center. 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 applicant filed an initial Form I-821, Application for Temporary Protected Status, under receipt number SRC 02 213 51931 after the initial registration period had closed. The Director, Texas Service Center (TSC), denied that application on September 16, 2002, after determining that the applicant had failed to establish she was eligible for late initial registration. The director also determined that the applicant had failed to establish her continuous residence and continuous physical presence in the United States during the requisite periods, noting that on her Form I-821, Application for Temporary Protected Status, she had indicated her date of entry into the United States as October 25, 2000. On July 8, 2003, the applicant filed an appeal from the denial decision. The Chief, AAO, rejected that appeal on November 2, 2004, after determining that the appeal had been filed late and that the applicant had failed to establish her eligibility for TPS. Prior to the issuance of the AAO decision on the applicant's initial appeal, the applicant filed a second appeal dated October 1, 2003. The TSC Director treated that untimely appeal as a motion to reopen and dismissed it because it was filed late and did not meet the requirements of a motion to reopen.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 28, 2004, and indicated that she was re-registering for TPS.

The director denied the re-registration 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 filed her initial TPS application on June 28, 2002, that she is eligible for late initial registration as the spouse of an alien currently eligible to be a TPS registrant, and that she has maintained continuous residence in the United States since 1999. In support of the appeal, the applicant submits additional documentation consisting of: a Honduran marriage certificate, with English translation, indicating her marriage to [REDACTED] in Honduras on February 1, 1991; birth certificate of children born to the couple; the Employment Authorization documents (EAD) for [REDACTED] indicating his authorization under Category A12; Citizenship and Immigration Services (CIS) receipt notices reflecting approval of [REDACTED] TPS status for successive years, CIS receipt notices for [REDACTED]'s EAD applications; an affidavit from [REDACTED]; and, medical reports for the applicant dated in February 2001.

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.

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 initial application on June 28, 2002, and the current application with CIS on December 28, 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.

Review of the record reflects that the applicant's husband is an approved TPS registrant, and that the applicant was married to him prior to the initial registration period for Hondurans that began on January 5, 1999. The applicant, therefore, is eligible for late initial registration under 8 C.F.R. § 244.2(f)(2)(iv). However, the application still may not be approved. While regulations allow for the spouse of a TPS registrant to submit a TPS application as a late initial registration, the regulations do not relax the requirements that individual TPS applicants must meet.

In this case, the applicant has 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 indicated on her initial Form I-821, that she entered the United States on October 25, 2000. After the denial of her TPS application, the applicant's subsequent Forms I-821, indicated that she had entered on "10-25-97." Review of the applicant's husband's record of proceedings reflects that on his August 10, 1999, and June 16, 2000, TPS

applications he indicated that his spouse was then residing in [REDACTED] He did not indicate that she was residing in this country until his next TPS application was filed on July 5, 2001. It is noted that the applicant now is asserting entry into the United States at a date earlier than her actual date of entry in an apparent attempt to gain benefits for which she is not otherwise eligible

In addition, the applicant has not submitted sufficient credible evidence to establish her continuous residence in and continuous physical presence in the United States during the requisite periods. Some of the documentation has been altered. For example, some of the 1999 billing statements are dated as having been issued months prior to the dates the services are stated to have occurred. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Therefore, the applicant has not established that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c), and the application must also be denied for these reasons.

Beyond the director's decision, the applicant has provided no further evidence to establish that she is a national or citizen of Honduras. The record does not contain any photo identification such as a passport or national identity document to establish her nationality. 8 C.F.R. § 244.2(a) and § 244.9(a)(1). The application shall be denied for this additional 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.