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U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

[EAC 06 216 72403]

OFFICE: Vermont Service Center

Date:

OCT 03 2007

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:

[REDACTED]

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 "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a 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. The director also found that the applicant had failed to 1) establish her national identity; 2) establish qualifying continuous residence and continuous physical presence in the United States during the requisite periods; and 3) had failed to provide the final court disposition for an arrest on her criminal record.

On appeal, the applicant asserts she has been present during the required periods, that she is a national of Honduras, and submits evidence in support of her assertions.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 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.

The phrase 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.

The phrase 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.

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 period.

Section 8 C.F.R. § 244.9 requires applicant's to submit all information requested in the instructions of the forms and as may be requested by CIS. It also provides that acceptable evidence of nationality includes:

- (i) Passport;
- (ii) Birth Certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of origin bearing a photo and/or fingerprint.

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed her application with Citizenship and Immigration Services (CIS) on May 4, 2006.

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 first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed her application after the initial registration period had closed. 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.

On October 26, 2006, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation relating to her residence and physical presence in the United States.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on December 14, 2006. On appeal, the applicant asks that CIS approve her application.

The applicant submitted evidence in an attempt to establish her qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file her Application for Temporary Protected Status within the initial registration period, or within 60 days of expiration of any condition listed in 8 C.F.R. § 244.2(f)(2). The applicant has not submitted any evidence 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 conclusion that the applicant had failed to establish her eligibility for late registration will be affirmed.

The second issue in this proceeding is whether the applicant has established her continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States since January 5, 1999.

As stated above, the applicant was requested on October 26, 2006, to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. The record does not indicate that the applicant responded.

The director concluded that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods and denied the application.

On appeal, the applicant submits additional evidence in support of her qualifying presence.

Upon examination of the record the AAO concludes that the applicant has been continuously resident and continuously physically present during the required periods. The record contains regular and systematic filings

from the applicant with CIS, in addition to tax documentation, affidavits and employer letters. The portion of the director's decision on the issue of qualifying continuous residence and physical presence will be withdrawn.

The next issue in this matter is the applicant's national identity. The record contains a certified translation of the applicant's birth certificate and a copy of her passport. The applicant has provided sufficient evidence to establish her national identity and this portion of the director's decision will be withdrawn.

The next issue in this matter is the applicant's failure to provide the final court disposition of arrests listed on her criminal record. An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. *See* Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

The record reveals the following offenses:

1. On July 30, 1992, the applicant was arrested by the Sulphur (Louisiana) Police Department for Illegal Use of Currency.
2. On October 23, 1992, the applicant was arrested by the Drug Enforcement Agency in North Charleston, South Carolina, for Conspiracy to Possess with Intent to Distribute. The FBI reports that a charge of Conspiracy / Cocaine charge was dismissed on January 13, 1993; however, the applicant has failed to provide the actual court disposition for this arrest.

Pursuant to a letter dated October 26, 2006, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant did not respond to this director's request.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on December 14, 2006.

On appeal, the applicant asks that CIS approve her application and submits a local records check in support of her assertions.

The FBI report of the applicant's arrests do not make clear the list of charges against the applicant during her arrests, or clarify the nature of the dispositions of the charges listed. While one entry indicates a charge may have been dismissed, the AAO cannot determine if this was due to a reduction and subsequent conviction on a lesser charge, and what if any, dispositions have been reached in the charge(s) listed at No. 1 above. The applicant's use of an alias clouds the ability of CIS to determine where the truth lies. Thus, the final court dispositions for any and all arrests, as requested on the applicant's Form I-821, are a material line of inquiry. While the applicant submitted a local records check, the records check is for Florence, South Carolina, only, and states that there are "no criminal judgments [currently] pending against" the applicant. Thus the records check does not clarify the final disposition of any prior charges against the applicant, or detail what convictions are on the applicant's record. CIS is unable to determine what the applicant has been convicted of or, given the use of an alias, whether the charges have even been resolved.

The applicant has failed to provide sufficient evidence revealing the final court disposition of her arrests detailed above. The applicant is ineligible for Temporary Protected Status because of her failure to provide information necessary for the adjudication of her application. 8 C.F.R. § 244.9(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

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 TPS 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.