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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date **OCT 01 2010**

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A motion to reopen, filed by the applicant, was granted by the director and he again denied the application. The applicant appealed the director's decision on the motion, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is 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 determined that the applicant failed to establish she: 1) had continuously resided in the United States since December 30, 1998; 2) had been continuously physically present in the United States since January 5, 1999; and 3) was eligible for late registration. The director, therefore, denied the application.

On appeal, the applicant states that the reason she did not timely apply for TPS was that her attorney negligently failed to submit the paperwork. The applicant indicates that a brief would be submitted to the AAO within 30 days. However, to date, no further correspondence has been presented.

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 as designated by the Secretary, Department of Homeland Security (Secretary), 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 Secretary 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 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 conditions described in paragraph (f)(2) of this section.

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.

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, 2012, upon the applicant's re-registration during the requisite period.

The initial registration period for Hondurans was from January 5, 1999 to August 20, 1999. The record shows that the applicant filed her initial TPS application on February 18, 2009. The applicant filed her initial TPS application on February 10, 2003.

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 United States Citizenship and Immigration Services (USCIS). 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 proceeding 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 from January 5, 1999 through August 20, 1999, she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed 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 the late initial registration. 8 C.F.R. § 244.2(g).

On June 18, 2009, the applicant was provided the opportunity 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 continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States from January 5, 1999, to the filing date of the application. The applicant, in response, provided evidence in an attempt to establish continuous residence and continuous physical presence during the qualifying period. She did not present evidence of her eligibility for late registration. Therefore, the director denied the application.

On appeal, the applicant states that the reason she did not timely apply for TPS was because her attorney failed to submit the TPS paperwork. The applicant also submits copies of complaints against the attorney and a status report indicating that the attorney was not eligible to practice law.

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel or the authorized representative with respect to the actions taken and what representations counsel or the representative did or did not make to the respondent in this regard, be informed of the allegations leveled against her and be given an opportunity to respond, (2) that the person whose integrity or competence is being impugned had the opportunity to respond to the allegations, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 9 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F. 2d 10 (1st Cir. 1988). The applicant has failed to submit evidence confirming that her previous counsel had the opportunity to respond to the allegations. The applicant submits a "file copy" of what appears to be complaint forms filed before the State of Connecticut Judicial Branch and to the State of California. However, there is no acknowledgement of receipt of either complaint form. Therefore, the applicant has not established that either complaint was properly filed with the appropriate disciplinary authority. Likewise, no evidence has been presented to establish that counsel has been informed of the allegations leveled against her. The applicant asserts that she hired the services of counsel on January 1, 1999 and "proof of the payments are submitted". However, the applicant has not provided any proof that a relationship existed with counsel during the initial registration period. To the extent that the applicant has failed to produce evidence sufficient to substantiate an ineffective assistance of counsel claim, the AAO will review the record applying standard statutory and regulatory eligibility requirements and burdens of proof.

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 failed to establish her eligibility for late registration will be affirmed.

The second and third issues in this proceeding are 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 from January 5, 1999.

As stated above, the applicant was requested on June 18, 2009 to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the following documentation:

1. Copies of an Urgent Message from [REDACTED] dated August 16, 1999; a statement from [REDACTED], a document from [REDACTED] in Spanish, with no English translation dated August 18, 1999; receipts from [REDACTED] with dates from May 10, 2001 through May 4, 2004; and Pacific Bell bills dated December 5, 2000, March 5, 2001, April 5, 2001.
2. Copies of Western Union Money Transfer receipts from November 13, 2000 through December 12, 2002.
3. Copies of identification cards from [REDACTED] for July 13, 2002 and 2003-2004; a Los Angeles Unified School District Adult Education certificate dated August 17, 2002; and State of California Benefits Identification Cards issued on February 15, 2005 and August 23, 2005.
4. Copies of hand-written rent receipts for [REDACTED] dated February 25, 2001 through November 1, 2003; [REDACTED] documents dated May 3, 2001, May 13, 2003, June 6, 2003, and January 24, 2006; [REDACTED] cards issued on May 3, 2004 and March 13, 2008; [REDACTED] School Report Cards for the applicant's son dated October, 2005, November 2005 and October 17, 2007, December 2007, April 2, 2008 and October 3, 2008; receipts from [REDACTED] dated December 22, 2006 and January 2, 2007; [REDACTED] receipts dated November 28, 2006 and March 30, 2007; a statement from [REDACTED] in Spanish, with no English translation dated August 26, 2006; a [REDACTED] Test Individual Student Report for the applicant's son for Spring 2007; a Credit Return Merchandise dated January 2, 2007; an [REDACTED] policy statement effective January 10, 2008; a [REDACTED] with an effective date of January

3, 2008; an [REDACTED] Instruction Sheet receipt dated March 11, 2008; a prescription dated March 11, 2008; a First Sight Enrollment Form dated November 9, 2008; an [REDACTED] document in Spanish, with no English translation dated March 1, 2008; and a Los Angeles Unified Schools Cumulative Report for the applicant's son for Spring 2007.

The director concluded that the applicant had failed to establish her qualifying residence and physical presence in the United States during the requisite periods and denied the application. On motion from the director's decision, the applicant submits:

5. Copies of four hand-written rent receipts for [REDACTED] purportedly dated August 30, 1998, through May 30, 1999, a Honduran passport issued on May 30, 2007 in Honduras, and a letter from [REDACTED]

On appeal, the applicant failed to submit any additional evidence or documentation.

[REDACTED] stated that she rented a bedroom to the applicant at [REDACTED] California, from May 10, 1998 to June 1, 1999. [REDACTED] stated that the applicant rented a bedroom from her at [REDACTED] California from June 1, 1999 to November 1, 1999. However, this statement has little evidentiary weight or probative value. These statements are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. The hand-written rent receipts detailed above are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Furthermore, the credibility of these documents is suspect since some receipts bear sequential receipt numbers, which precedes the other receipts. In addition, the authenticity of the August 30, 1998 rent receipt is questioned as the year written on the receipt appears to have been altered. Therefore, these receipts carry little evidentiary weight and will not serve to establish the applicant's eligibility.

The remaining evidence is dated subsequent to the qualifying dates to establish continuous residence and continuous physical presence in the United States. Furthermore, in regards to the Spanish language documentation, any document containing foreign language submitted to the United States Citizenship and Immigration Services (USCIS) shall be accompanied by a full English language translation, which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3). As the applicant failed to comply with the aforementioned, the statements cannot be considered in the rendering of this decision.

The applicant has not submitted sufficient evidence to establish her qualifying residence since December 30, 1998 and her continuous physical presence in the United States from January 5, 1999.

She has, therefore, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will also be affirmed.

Beyond the decision of the director, it is noted that the applicant provided a photocopy of the first page of her passport in an attempt to establish her nationality and her identification. However, the passport was signed by the applicant and issued in Honduras on May 30, 2007. This is further evidence that the applicant has not met the continuous residence and physical presence criteria described in 8 C.F.R. § 244.2(b) and (c), thereby precluding a finding that the applicant was in the United States during the requisite timeframe.

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.