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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

M1

[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:

[REDACTED]

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, 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 determined that the applicant failed to establish that she was eligible for filing her TPS application after the initial registration period from January 5, 1999 to August 20, 1999. The director, therefore, denied the application.

On appeal, the applicant through counsel states that she is eligible for late initial registration for TPS because she is the child of a TPS-eligible alien. The applicant indicates at item 2 on the appeal form that a brief and/or additional evidence would be submitted to the AAO within 30 days.¹ However, more than 60 days later, no additional correspondence has been presented by the applicant.

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:

¹ Every appeal submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. 8 C.F.R. § 103.2(a)(1). The Form I-290B instructs the applicant to submit a brief and additional evidence to the AAO within 30 days of filing the appeal.

- (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 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.

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.

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 December 7, 2009.

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 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 February 19, 2010, 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 date of filing 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 sufficient evidence of her eligibility for late registration. Specifically, the applicant submitted a copy of her birth certificate with English translation and copies of her mother's past and current employment authorization cards. However, the applicant did not apply for TPS until after she was twenty-five years of age and was no longer eligible for TPS as the "child" of a TPS-eligible applicant. Therefore, the director denied the application.

On appeal, counsel states that the director erred in denying her TPS application. According to counsel, the applicant can qualify for late registration because she is the child of an alien currently eligible for TPS during the initial registration period. However, section 101(b)(1) of the Act defines "child" as an unmarried person less than twenty-one years of age. Therefore, the applicant had to apply for TPS before she turned twenty-one years of age or within 60 days of October 8, 2005, when she reached twenty-one years of age. The applicant did not submit her TPS application until December 7, 2009 when she was twenty-five years of age.

Counsel also stated that a notary attempted to apply for TPS on behalf of the applicant in 1999, but failed to obtain her signature and send the correct filing fee. There is no evidence that the applicant filed a TPS application prior to December 7, 2009. Furthermore, USCIS is not responsible for the action or inaction of the applicant's representative. The applicant's statements made on appeal have been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above. The applicant has not submitted sufficient evidence to establish that she has met the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS will be affirmed.

The director also determined that the applicant failed to establish continuous residence and continuous physical presence in the United States during the qualifying periods. As noted above, on February 19, 2010, the applicant was 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 date of filing the application. In response, the applicant submitted her [REDACTED] Schools student records; a copy of her mother's residential lease agreement dated October 1, 1997, and medical records.

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 appeal, counsel states that the application was erroneously denied and the applicant has been continuously and physically present since August 1998.

The applicant, on appeal, provided a statement dated September 20, 1999, indicating that she has been residing with her mother since August 11, 1998. The applicant also submitted school records that establish her presence in the United States from 1998/1999 through 2002/2003 and vaccine records dated prior to and during the qualifying periods. Consequently, this basis for the denial of the TPS application has been overcome.

The applicant has submitted sufficient evidence to establish her continuous residence since December 30, 1998 and her continuous physical presence in the United States from January 5, 1999. She has, therefore, established that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Nevertheless, as noted above, the applicant has not established eligibility for late registration and, therefore, the TPS application cannot be approved.

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.