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U.S. Citizenship  
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Services



M

FILE: [REDACTED]  
[EAC 06 251 73630]

OFFICE: Vermont Service Center

DATE: **AUG 17 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: 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 "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The applicant claims to be a citizen of Honduras who is applying for 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 on the grounds that the applicant failed to establish her eligibility for late TPS registration; failed to establish her continuous residence and physical presence in the United States for the requisite time periods; and failed to provide the final court dispositions of two arrests in California.

On appeal the applicant submits some additional documentation pertaining to her length of stay in the United States and her criminal record.

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.

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).

8 C.F.R. § 244.1 defines “felony” and “misdemeanor:”

*Felony* means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

*Misdemeanor* means a crime committed in the United States, either

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.  
8 C.F.R. § 244.1.

Honduran nationals applying for TPS 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. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The applicant filed her initial Form I-821, Application for Temporary Protected Status, on May 29, 2006 – nearly seven years after the close of the initial registration period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she met at least one of the conditions 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 CIS. See 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. *See* 8 C.F.R. § 244.9(b).

On September 25, 2006, the director issued a Notice of Intent to Deny (NOID) in which the applicant was requested to submit evidence of her eligibility for late TPS registration, her continuous residence and physical presence in the United States from the dates applicable to Honduran nationals, an identity document with a photo, and the final court dispositions of two arrests in the State of California. Though the NOID advised the applicant to submit the requested information within 30 days, no response was received at the VSC

In a decision issued on February 13, 2007, the director noted the applicant's failure to respond to the NOID and denied the application on the grounds that the applicant failed to establish that she was eligible to file a late TPS registration, that she has been a continuous resident of the United States since December 30, 1998, and that she has been physically present in the country since January 5, 1999, and also failed to submit the final court dispositions of two arrests – on December 13, 2000, by the Sheriff's Office of San Diego, California, on a charge of petty theft, and on November 12, 2002, by the Police Department in Montclair, California, again on a charge of petty theft.

On appeal the applicant – who claims to have entered the United States without inspection on January 15, 1996 – has submitted additional evidence of her residence and physical presence in the United States in the form of various documentation spanning the years 1998-2006, in addition to a court disposition of her first arrest. The latter document, from the Superior Court of California, County of San Diego, dated February 14, 2007, is an Order Granting Petition for Relief (under Penal Code section 1203.4 & 1203.4a) stating that the applicant's conviction in case number [REDACTED] (the first petty theft charge) was set aside and the charge dismissed. No final court disposition was submitted with regard to the applicant's second arrest for petty theft, however, nor any evidence that the applicant is eligible for late TPS registration.

The documentation submitted on appeal, together with previously submitted evidence, is sufficient to establish the applicant's continuous physical presence in the United States since January 5, 1999, and continuous residence in the United States since December 30, 1998, as required for TPS applicants from Honduras under 8 C.F.R. § 244.2(b) and (c). Overcoming these grounds for denial, however, does not mitigate the applicant's failure to file her application for TPS during the initial registration period for Honduran nationals or to establish that she is eligible for late registration under one of the criteria enumerated at 8 C.F.R. § 244.2(f)(2). Furthermore, the applicant has not submitted a final court disposition of her second arrest for petty theft on November 12, 2002. Thus, she has not fulfilled her evidentiary requirement under 8 C.F.R. § 244.9(a) to establish her eligibility for TPS under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). On both of these grounds, therefore, the director's denial of the application will be affirmed.

Beyond the decision of the director, the applicant has not submitted a photo identity document of the type requested in the NOID and set forth in 8 C.F.R. § 244.9(a)(1) to establish her nationality and identity. For this additional reason the application for TPS must be denied.

The application will be denied for the above stated reasons, with each considered as an independent and alternative ground 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.