



U.S. Citizenship
and Immigration
Services

10-1

[REDACTED]

FILE: [REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: JUN 23 2004

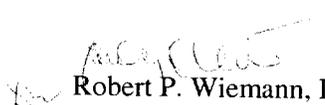
IN RE: Applicant: [REDACTED]

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.


Robert P. Wiemann, Director
Administrative Appeals Office

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

The applicant claims to be a native and citizen of Honduras and 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 submit evidence to establish that he was eligible for filing after the initial registration period from January 5, 1999, to August 20, 1999. The director, therefore, denied the application.

On appeal, the applicant reiterates his claim to eligibility for TPS, and claims to be the spouse of a current TPS registrant. The applicant submits additional evidence.

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 Attorney General is eligible for temporary protected status 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 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 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 parole; 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 condition described in paragraph (f)(2) of 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.

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.

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 in the United States 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, 2005, upon the applicant's re-registration during the requisite time period.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

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 initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reflects that the applicant filed his TPS application on August 23, 2002, after the initial registration period for Hondurans had closed. The applicant stated on the TPS application that his spouse was a current TPS registrant. He submitted a copy of a License and Certificate of Confidential Marriage, dated June 28, 2002, reflecting that he and a Yina Yackelin Gutierrez, were married in California on June 28, 2002.

On February 6, 2003, the applicant was requested to submit the following: (1) evidence of nationality; (2) evidence of identity; (3) evidence to establish that he had continuously resided in the United States since December 30, 1998; (4) evidence to establish that he had been continuously physically present in the United States since January 5, 1999; and (5) evidence to establish that he was eligible for filing after the initial

registration period from January 5, 1999, to August 20, 1999. While the applicant, in response, submitted evidence of his residence in the United States, he failed to submit evidence to establish his eligibility for late registration. On April 1, 2003, the director denied the application.

Aliens applying under the provisions for late initial registration must prove that they are eligible because during the initial registration period of January 5, 1999, through August 20, 1999, they fell within the provisions described in paragraph (f)(2) above.

The applicant, on appeal, asserts that he and his wife were initially married in Honduras on May 20, 1990. He states that he did not have any proof of the alleged marriage, and claims that the individual who prepared his TPS application incorrectly advised him that he and his spouse must be married again in the United States. The applicant submits a copy of a facsimile, with English translation, which he asserts is proof of his marriage on May 20, 1990, in Honduras, to [REDACTED]. The applicant did not furnish either the original or a certified copy of the May 20, 1990 certificate of marriage to document his claim that he and his spouse had been previously married in Honduras. It is noted that both the applicant and his spouse declared on the June 28, 2002, California License and Certificate of Confidential Marriage, that they had not been married previously. It is further noted that the applicant has not furnished any evidence to establish that his wife has been granted TPS.

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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

The applicant has failed to submit any credible evidence to establish that he was married to a TPS registrant during the initial registration period from January 5, 1999, through August 20, 1999. The applicant's marriage, as documented, did not take place until June 28, 2002, after the initial registration period had expired. Therefore, it must be concluded that the applicant has failed to establish that he met the qualification for late registration, and to overcome the findings of the director pursuant to 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish eligibility for late registration will be affirmed.

Beyond the decision of the director, it also is noted that the applicant failed to submit evidence of nationality as requested by the director on February 6, 2003. As the appeal will be dismissed on the grounds discussed above, this issue need not be examined further.

The burden of proof is upon the applicant to establish 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.