

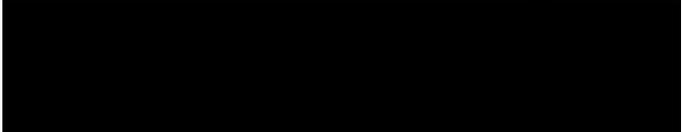
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20529

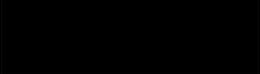


U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY



FILE:

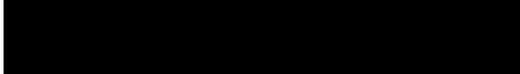


Office: NEBRASKA SERVICE CENTER

Date: JUN 29 2004

IN RE:

Applicant:



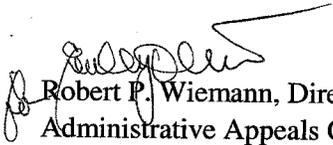
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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

**DISCUSSION:** The application was denied by the Director, Nebraska 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 submit evidence to establish that she 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, applicant's former counsel asserts that the late initial registration regulations add restrictions to the TPS registration process that are arbitrary and capricious, and unfairly discriminate between TPS registrants who file their applications within the initial registration period and applicants who file their TPS applications after the initial registration period has ended. Counsel further states that the applicant initially filed an application for TPS on December 6, 2001.

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 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 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.

The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999.

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 record of proceeding confirms that the applicant filed her initial TPS application on July 12, 2002, after the initial registration period for Hondurans had closed. On May 5, 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.

On appeal, the applicant's former counsel states that the applicant initially filed an application for TPS on December 6, 2001. The record reflects that the applicant submitted a Form I-821, Application for Temporary Protected Status, and a Form I-765, Application for Employment Authorization, on December 6, 2001, after the initial registration period had closed. However, the applicant had not submitted the proper registration fee and the TPS application was rejected and returned to her. The applicant attempted to file the TPS application on December 11, 2001 and June 17, 2002; however, the Form I-821 was rejected and returned to her on both occasions. 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 applicant resubmitted the TPS application, with the proper filing fee, on July 12, 2002. While counsel maintains that the applicant had previously filed an application for TPS, all of the applicant's attempts to apply for TPS occurred after the initial registration period of January 5, 1999 to August 20, 1999.

The applicant's former counsel asserts that the applicant has been burdened with regulations that are not applicable to all applicants. All applicants seeking TPS under section 244 of the Act must qualify on the same basis, as mandated by Congress. No discrimination or violations of equal protection, in this case, can be found. Regulations state that in order for an applicant to qualify for late registration he or she must provide evidence that during the initial registration period, he or she fell within the provisions described in 8 C.F.R. § 244.2(f)(2). The applicant did not file an application for TPS during the initial registration period from January 5, 1999 to August 20, 1999. Nor did the applicant furnish evidence to establish that she 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 decision to deny the application is affirmed.

It is noted that the record also contains an outstanding Form I-205, Warrant of Removal/Deportation, issued on September 25, 1996, in Los Angeles, California. The applicant was ordered to report for deportation on October 28, 1996; however, she failed to appear.

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.