

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



**U.S. Citizenship
and Immigration
Services**

[Handwritten signature]

[Redacted]

FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 29 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.

[Signature]
for 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 denied the application because the applicant failed to establish he was eligible for late registration.

On appeal, the applicant submits a copy of an Employment Authorization document for his wife. The applicant states that they have resided together since January 1999, and their son was born on February 6, 2001. The applicant submits a copy of his son's birth certificate, and additional evidence of his residence in the United States.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state 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 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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid nonimmigrant status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he or she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

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 initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The record reveals that the applicant filed an initial application for TPS on June 12, 2000. That application was denied on May 2, 2001 for abandonment. The applicant did not file a motion to reopen during the requisite timeframe. The applicant filed a second Form I-821 on July 2, 2001. That application was denied on November 6, 2001, because the director determined that the applicant had failed to establish his eligibility for late registration. Again, the applicant failed to file a motion to reopen during the requisite timeframe.

The applicant filed a third Form I-821 on June 20, 2002. Here, the director again found the applicant ineligible for filing under the provisions of late registration because this application was filed outside of the initial registration period. While the director found the applicant ineligible for TPS because he had failed to establish eligibility for late registration, the director's decision did not specifically explain the entire basis for denial.

The applicant's initial Form I-821 was filed on June 12, 2000, after the expiration of the initial registration period for Hondurans had expired. That initial application resulted in a denial from the director. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed the instant Form I-821 on June 20, 2002. As the initial application was denied on May 2, 2001, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration.

On September 25, 2002, the applicant was requested to submit 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. The director, therefore, denied the application.

On appeal, the applicant submits a copy of an Employment Authorization document for his spouse, which shows a validity period from July 6, 2002, to July 5, 2003. The applicant states that he and his wife have resided together since January 1999. In order to qualify for late registration under condition (iv) listed above, the applicant would have had to demonstrate that he is the spouse of a TPS registrant and that he was so during the initial filing period of January 5, 1999, to August 20, 1999. However, the applicant has not submitted a copy of his marriage certificate to document when the marriage took place, and to establish that he is eligible for late registration as the spouse of a current TPS registrant. The applicant has not submitted sufficient evidence to establish eligibility for late registration. Consequently, the director's decision to deny the application will be affirmed.

While the applicant maintains that he has continuously resided in the United States since June 1998, the record of proceeding contains evidence that the applicant was apprehended by Border Patrol agents while attempting to illegally enter the United States at or near Laredo, Texas, on February 22, 1999. He was served with a Notice to Appear on that date. On September 6, 2001, an immigration judge ordered the applicant to be removed in absentia. A Warrant of Removal/Deportation, Form I-205, was issued on October 23, 2001, in San Antonio, Texas.

An alien applying for temporary protected status 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.