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Washington, DC 20536



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



FILE: 

Office: VERMONT SERVICE CENTER

Date: **MAY 11 2004**

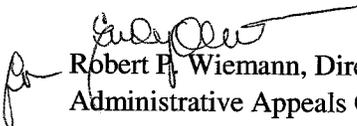
IN RE: Applicant: 

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

ON BEHALF OF APPLICANT: 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 H. Wiemann, Director
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 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 also determined that evidence in the record indicated the applicant did not enter the United States until October 2, 2000. The director, therefore, denied the application.

On appeal, the applicant states she entered the United States on October 20, 2000, and she is the spouse of an alien eligible to be a TPS registrant. The applicant submits a copy of her marriage license and evidence of her 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 record reflects that the applicant filed her TPS application on June 24, 2002. In a notice of intent to deny dated October 24, 2002, the applicant was requested to submit: (1) evidence to show that she has continuously resided in the United States since December 30, 1998; and, (2) evidence to establish that she was eligible for filing after the initial registration period from January 5, 1999 to August 20, 1999. Because the applicant's response did not contain all of the requested information, 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, states that she entered the United States on October 20, 2000 and that she is the spouse of an alien eligible for TPS. She submits four paycheck stubs for the period from October 13, 2000 to January 5, 2001, an airline ticket and boarding pass for travel from Los Angeles, California, to Boston, Massachusetts, on October 2, 2001, and a statement from Labor U.S.A., Inc., attesting to the applicant's employment during the period December 2000 through November 2002. She also submits a copy of a marriage certificate that reflects that she and Juan Carlos Izaguirre, were married in Providence, Rhode Island, on June 15, 2002.

In order to qualify for late registration under condition (iv) listed above, the applicant would have had to demonstrate that she was the spouse of a person eligible to be a TPS registrant during the initial filing period of January 5, 1999 to August 20, 1999. The applicant's marriage, as documented, did not take place until June 15, 2002, after the initial registration period had expired. Therefore, the applicant's marriage does not establish her eligibility for late registration under 8 C.F.R. § 244.2(f)(2).

Furthermore, pursuant to Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, an alien who is a national of a designated state is eligible for temporary protected status only if such alien establishes that he or she has met the continuous residence and physical presence criteria for TPS. The applicant stated on the Form I-821 application for TPS that she did not enter the United States until October 20, 2000; therefore, she could not have met the requirements of continuous residence in the United States since December 30, 1998 and physical presence in the United States since January 5, 1999.

The applicant has failed 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). The applicant also failed to establish her qualifying residence in the United States. 8 C.F.R. § 244.2(c). Therefore, the director's decision to deny the application for temporary protected status is affirmed.

The burden of proof is upon the applicant to establish that 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.