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

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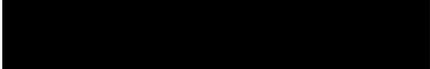


**U.S. Citizenship and Immigration Services**



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FILE:  Office: VERMONT SERVICE CENTER Date: **NOV 03 2004**

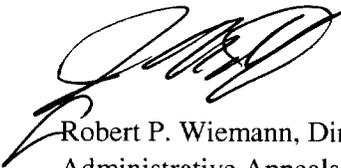
IN RE: Applicant: 

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 P. 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 establish that he was eligible for filing his TPS application after the initial registration period from January 5, 1999 to August 20, 1999. The director, therefore, denied the application.

On appeal, the applicant states that he is eligible for filing his TPS application after the initial registration period.

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 conditions described in paragraph (f)(2) of this section.

*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.

*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.

*Brief, casual and innocent absence*, as defined in 8 C.F.R. §244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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 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 period.

The initial registration period for Hondurans was from January 5, 1999 to August 20, 1999. The record shows that the applicant filed his initial application on June 26, 2002. The applicant filed another application on March 7, 2003.

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 his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from January 5, 1999 through August 20, 1999, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the

individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. *See* 8 C.F.R. § 244.2(g).

On June 11, 2003, the applicant was provided the opportunity to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant, in response, provided evidence of his nationality and identity, and evidence in an attempt to establish his residence and physical presence in the United States. The applicant did present evidence of his marriage to a TPS registrant. However, the director determined that the applicant did not qualify for late registration as the spouse of an eligible TPS registrant because the applicant's marriage did not take place during or before the initial registration period. The applicant did not present sufficient evidence of his eligibility for late registration. Therefore, the director denied the application.

On appeal, the applicant states that he is eligible for filing a late TPS application. According to the applicant, he had an application for relief from removal pending or subject to further review or appeal because he was detained by the Border Patrol in Texas in 1997 and his case was still pending in 1999. The applicant states that he cannot provide any documentation to support this claim. The applicant also states that his wife is eligible for TPS and that he qualifies as the spouse of a TPS applicant.

The record indicates that the applicant was arrested at Laredo, Texas for entry into the United States without inspection and that on April 29, 1997, at San Antonio, Texas, an Immigration Judge ordered the applicant deported. On May 19, 1997, a Form I-205 Warrant of Removal/Deportation was issued. Therefore, the applicant had no application for change of status, adjustment of status, asylum, voluntary departure or any relief from removal pending or subject to further review or appeal during the initial registration period. Furthermore, while the regulations may allow spouses of aliens who are TPS-eligible to file their applications after the initial registration period has closed, the marriage must have taken place either before or during the initial registration period. The marriage certificate submitted indicates that the applicant did not marry until December 28, 2002. In order to be granted TPS as the spouse of a TPS recipient, the applicant must be eligible under the same time frames established for the spouse and meet the same nationality requirements established for the spouse. The applicant's wife is El Salvadoran; as a national of Honduras, the applicant cannot meet these requirements.

The applicant has not submitted evidence to establish that he has met the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish his qualifying continuous residence or continuous physical presence during the requisite time periods. Therefore, the application must be denied on this basis as well.

In regards to the Warrant for Deportation, it does not appear that the warrant was executed. However, it presents the possibility that the applicant left the United States and returned without permission, contrary to section 212(a)(9) of the Immigration and Nationality Act. Consequently, the applicant may not have maintained continuous residence or physical presence in the United States during the qualifying period pursuant to 8 C.F.R. §§ 244.2(b) and (c).

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.