



U.S. Citizenship  
and Immigration  
Services

VAI

[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: [REDACTED]

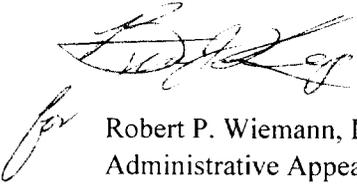
IN RE: Applicant: [REDACTED]

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.

  
for 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 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 she was eligible for late registration. The director also found that the applicant had failed to establish her continuous residence and her continuous physical presence in the United States during the requisite periods.

On appeal, the applicant provides a brief statement and additional documentation.

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 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.

The first issue raised by the director to be addressed in this proceeding is whether the applicant is eligible for late registration.

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 initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reflects that the applicant filed her initial application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on June 22, 2002.

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 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 own statements. 8 C.F.R. § 244.9(b).

The record of proceeding confirms that the applicant filed her application for TPS on June 22 2002, after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, she was either in a valid immigration 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 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).

On August 11, 2003, in a notice of intent to deny, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence of her continuous residence and continuous physical presence in the United States during the required timeframes. The applicant failed to respond to the notice of intent to deny. Consequently, the director found that the applicant failed to establish her eligibility for late registration, her continuous physical presence in the United

States during the required timeframe, and her continuous residence in the United States during the required timeframe. Therefore, the director denied the application on October 2, 2003.

On appeal, the applicant states that her spouse is an alien that currently is registered under the TPS program. The applicant also states that she and her husband were married in Honduras on December 12, 1995, but was told that she needed to marry again. The applicant did not explain the circumstances as to why she was advised to marry again. The applicant provided a copy of her Honduran marriage certificate along with the English translation, which states the applicant and [REDACTED] were married on December 12, 1995 in [REDACTED] Honduras. The applicant also provided a copy of a marriage certificate, which states that the applicant and Jose Dolores Flores were married on May 15, 2002, in Alexandria, Virginia.

The record contains no explanation as to why or who advised the applicant that she needed to re-marry. It is not known if the applicant's marriage in Honduras was a valid marriage, which, if not, may explain the reason for the request to re-marry. Nevertheless, as the record offers no clarification in this matter, the applicant, based on the lack of information regarding her marriage in Honduras, cannot be considered a spouse of an alien currently eligible to be a TPS registrant. In addition, the applicant's current marriage did not take place until after the initial registration period for TPS applicants from Honduras. Consequently, the applicant, during the initial registration period for TPS applicants from Honduras, was not the spouse of an alien currently eligible to be a TPS registrant. The applicant provided no additional evidence on appeal that would establish her eligibility for late registration. Therefore, the applicant does not qualify for late registration as described in 8 C.F.R. § 244.2(f)(2). The director's decision to deny the application for temporary protected status will be affirmed.

The remaining issues raised by the director to be addressed in this proceeding is whether the applicant has established her continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States since January 5, 1999. The applicant must also have been in the United States during the requisite timeframe and otherwise satisfy the requirements under 8 C.F.R. § 244.2, as stated above.

The phrase 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.

The phrase 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 phrase 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.

The record contains: copies of earning statements for May 2000, June 2000, October 2000, November 2001, December 2001, January 2002, February 2002, March 2002, and April 2002; copies of two receipts, one dated May 20, 1998, and one dated November 7, 1998, from Best Way Travel Centro America Express, in Springfield, Virginia; a copy of a bank check from Bank of America, dated July 22, 1999; an affidavit from [REDACTED] stating that she has known the applicant since June 10, 1998; and, an affidavit from the applicant's spouse, [REDACTED] stating that the applicant has been with him since "June 10, 1998. It is noted that the applicant's name on both receipts and the dates on both the receipts and the check appear to have been altered. It is incumbent upon the petitioner 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) 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 visa petition. *Id.*, 582, 591.

As previously stated, the applicant, in a notice of intent to deny dated August 11, 2003, was requested to submit additional evidence to establish her continuous residence and her continuous physical presence in the United States during the requisite timeframes. However, the applicant failed to respond to the notice of intent to deny. Consequently, the director denied the application on October 2, 2003, finding that the applicant failed to establish continuous residence and continuous physical presence in the United States during the required periods, and that she had not established her eligibility for late registration.

On appeal, the applicant presents: copies of five of her spouse's Employment Authorization Cards with the latest being valid from July 6, 2003 through January 5, 2005; an affidavit from [REDACTED] of Creative Associates International, stating that the applicant has been in his employ as a "house cleaner on an irregular basis" since early 1999; an affidavit from her husband asking that his "husband" be accepted for late registration; and, copies of two of her Employment Authorization Cards with the latest being valid from July 6, 2003 through January 5, 2005. The applicant also resubmits copies of some of the aforementioned earning statements, the bank check, and one of the receipts from Best Way Travel Centro America Express.

None of the additional documentation submitted on appeal is sufficient in establishing that the applicant has continuously resided in the United States and has been continuously physically present in the United States during the required timeframes. The remaining documentation contained in the record is sparse and some are questionable as they appear to have been altered. The applicant has failed to establish that she has met the criteria described in 8 C.R.R. § 244.2(b) and (c). Therefore, the director's decision to deny the application for temporary protected status for these reasons will be affirmed.

An alien applying for TPS 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.