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



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[SRC 03 249 55326]

Office: TEXAS SERVICE CENTER Date: MAY 19 2005

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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) 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 that she was eligible for late registration.

It is noted that the record contains a Form G-28, Notice of Entry of Appearance As Attorney Or Representative, signed by the applicant, and indicating Ms. [REDACTED] Immigration Community Service, [REDACTED] Orlando, Florida, as the applicant's representative. However, the U.S. Department of Justice, Executive Office for Immigration Review, Recognition and Accreditation Roster does not list either Ms. [REDACTED] or Immigration Community Service, Orlando, Florida, as recognized entities. The applicant has signed the appeal form. Therefore, the applicant will be considered as self-represented.

On appeal, the applicant submits a statement and additional evidence, and resubmits some of the documentation that had previously been entered into the record.

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 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.

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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until July 5, 2006, 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 record reveals that the applicant filed her initial TPS application with Citizenship and Immigration Services (CIS), on September 9, 2003.

The burden of proof is upon the applicant to establish that 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from 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 she 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 late initial registration. 8 C.F.R. § 244.2(g).

On February 18, 2004, 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 establishing her continuous residence and continuous physical presence in the United States during the requisite periods. The applicant, in response, provided photocopies of the following documentation: three money order receipts dated May 13, 1997, June 9, 1998, and June 16, 1998 payable to the applicant; Western Union money transfer receipts dated in 1998 and 1999; and, original Western Union receipts dated in 2000 and 2001.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on March 13, 2004.

On appeal, the applicant states that she did apply for TPS on January 14, 1999, but her application was returned requesting more evidence. She states that she resubmitted the application and again it was sent back requesting more evidence. The applicant states that she then sent all the requested proof again in March 2004. She states that she is attaching this evidence with the appeal, including copies of the application and the envelope in which the documents were returned via certified mail. In support of the appeal, the applicant submits the following documentation:

1. A copy of an envelope postmarked August 22, 2000, from the Texas Service Center addressed to "Law Office [redacted] Orlando, FL 32809;
2. A Receipt for Certified Mail postmarked January 14, 1999, sent to the Texas Service Center from an unidentified source;
3. Copies of the Form I-821, Application for Temporary Protected Status, and Form I-765, Application for Employment Authorization, signed by the applicant and the preparer on "7/2/03;"
4. The applicant's Employment Authorization card (EAD) under Category C19, with validity from November 3, 2003 through January 5, 2005;
5. The applicant's Honduran national identity document issued on February 28, 1997;
6. An English translation of the applicant's birth certificate, without a copy of the original upon which the translation is based;
7. An affidavit from [redacted] Orlando, Florida, attesting to the applicant's residence in the United States since August 27, 1997;
8. An Affidavit of Co-Habitation from [redacted] Orlando, Florida, attesting that the applicant had shared the same property in Florida from May 5, 1997 through May 2001;
9. Copies of Western Union receipts dated in 1998 and 1999, and one dated in 2000; and,
10. Additional copies of the money orders payable to the applicant and dated in 1997 and 1998.

The copies of the applications for TPS and employment authorization submitted on appeal (Number 3 above) were signed as of July 2, 2003, and also indicate the applicant's marriage that occurred in 2002; it is not persuasive, therefore, that these are the same applications the applicant claims to have filed in 1999. The envelope and certified mail receipt (Numbers 1 and 2 above) do not contain information linking them to the applicant's case. The record does not contain evidence, and the applicant has not submitted sufficient evidence on appeal to establish, that she filed an earlier application for TPS. It is also noted that on the Form I-821, the applicant indicated that she was under deportation proceedings in Brownsville, Texas, on December 1, 1998. The records of CIS do not reflect immigration proceedings under this A number; the applicant failed to provide any evidence that she had been in proceedings during the initial registration period, a factor that may have bearing on her eligibility for late registration. The applicant has not submitted sufficient evidence to establish that she has met any of 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, the applicant has not submitted sufficient credible evidence to establish her continuous residence in the United States since December 30, 1998, and her continuous physical presence since January 5, 1999. It is noted that some of the documentation appears to have been altered, and some documents bear dates that precede the printer's edition of the forms on which the information is written. 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 application. It is incumbent upon the applicant 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 (BIA 1988). Therefore, the applicant has not established that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c), and the application must also be denied for these reasons.

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.

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The director denied the application because the applicant failed to establish that he was eligible for late registration.

On appeal, the applicant submits a statement.

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;
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 - (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 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.

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- (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
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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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until July 5, 2006, 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 record reveals that the applicant filed his initial TPS application with the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), on March 11, 2002.

The burden of proof is upon the applicant to establish that he 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his 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 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 late initial registration. 8 C.F.R. § 244.2(g).

On June 24, 2003, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his continuous residence and continuous physical presence in the United States during the requisite periods. In addition, the applicant was requested to submit photo identification or a national identity document bearing a photograph and/or fingerprint. The applicant, in response, provided photocopies of the following documentation:

1. A letter dated July 8, 2003, from Charles Cottle, stating that the applicant has rented from him since January 1998;
2. An Integon, GMAC Insurance Company, policy statement for the period of November 13, 2000 to May 13, 2001;
3. Invoices from Page Audio Video Appliances, Wallace, North Carolina, dated February 28, 2001, and July 31, 1999;
4. An original CP&L, Progress Energy Company, billing statement dated January 10, 2002;
5. An original Dish Network billing statement dated August 28, 2002;
6. A BB&T bank statement dated June 30, 2003; and,
7. A North Carolina Department of Health and Human Services, Affidavit of Parentage for Child Born Out of Wedlock, indicating that the applicant is the father of a child born in North Carolina on December 27, 1999.

With the initial application, the applicant had also previously submitted photocopies of his: Honduran birth certificate, with English translation; Social Security card; State of North Carolina Driver License issued on December 22, 1999; and, Employment Authorization card (EAD) under Category C19, with validity from August 21, 2002 through July 5, 2003.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on July 29, 2003.

On appeal, the applicant states that in December 1996 he was inspected by an Immigration Officer and “was given 30 days to be in this ... country.” He states that he expected to receive a “deportation letter,” but believed that his case was still pending because he had not heard anything from the INS. He also states that when TPS opened for Hondurans in 1999, he did not apply because he feared being deported. He asks for the opportunity to remain in the United States and contribute to the growth of this country. The applicant does not submit any additional documentation in support of the appeal.

The applicant previously submitted evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Form I-821, Application for Temporary Protected Status, within the initial registration period. The record does not corroborate the applicant's belief that his case before an Immigration Judge was still pending. The record contains the decision of the Immigration Judge, San Antonio, Texas, dated July 30, 1996, ordering the applicant to be deported to Honduras following his failure to appear for a hearing on that date. The applicant had been placed in proceedings following his apprehension by the United States Border Patrol while attempting entry into the United States, at or near Laredo, Texas, on or about March 24, 1996. The Order of Release on Recognizance specified that the applicant was not to change his place of residence from Bexar County, Texas,

without permission from the INS. The documents also reflect that the applicant refused to provide an address at which he could be notified of the proceedings. The applicant has not submitted any evidence to establish that he has met any of 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, the applicant has not submitted sufficient credible evidence to establish his continuous residence in the United States since December 30, 1998, and his continuous physical presence since January 5, 1999. The record does not include any evidence for the period prior to mid-1999. Therefore, the applicant has not established that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c), and the application must also be denied for these reasons.

It is also noted that the record contains a Federal Bureau of Investigation (FBI) fingerprint results report pertaining to the applicant's fingerprints. This report reflects the applicant's March 24, 1996, apprehension by the United States Border Patrol, and subsequent placement in deportation proceedings.

The record also contains a Warrant of Deportation issued at San Antonio, Texas, on August 22, 1996, following the final order of the Immigration Judge.

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.