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U.S. Citizenship
and Immigration
Services

MI

FILE: [REDACTED]
[SRC 02 196 54163]

Office: TEXAS SERVICE CENTER Date: **NOV 23 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.

Cindy M. Gomez

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 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;
- (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. 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 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, now Citizenship and Immigration Services (CIS), on June 7, 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).

With the initial application, the applicant submitted photocopies of: his Honduran birth certificate, with English translation; a fingerprint fee request; a partial copy the Form I-862, Notice to Appear, alleging that the applicant was apprehended by the United States Border Patrol while attempting entry into the United States at or near Brownsville, Texas, on October 27, 1997, and placing him in removal proceedings; an undated Form EOIR-33, Change of address reflecting an address in Miami, Florida; and, his State of Florida Identification Card issued on September 17, 1998, and Learner License issued on February 3, 2000.

On June 25, 2002, 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 qualifying continuous physical presence in the United States since January 5, 1999. The applicant, in response, stated that he was providing additional evidence and, if desired, could send his record from the Sheriff's Department. The applicant also submitted original documentation relating to his residence and physical presence in the United States, consisting of: money transfer receipts dated June 7, 1998, April 17, 1999, and November 14, 1999; a Dade County Police Benevolent Association, Inc., receipt dated November 24, 2001; Teco Peoples Gas billing statements dated September 30, 1999 and June 5, 2001; a Telscape Communications billing statement for the period of December 23, 2000 through January 22, 2001; a Florida Power & Light billing statement dated October 23, 2001; Bell South billing statements dated December 23, 1999, December 14, 2000, and December 11, 2001, with corresponding payment receipts; and, additional original receipts dated in 1999, 2000, and 2001.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on September 24, 2002.

On appeal, the applicant states that he understands that the materials he submitted were received, but that he needs an explanation of what is necessary in order to proceed with his case. The applicant does not submit any additional evidence 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. Based upon the evidence of record as currently constituted, the applicant has not met any of the criteria for late registration as specified under 8 C.F.R. § 244.2(f)(2), during the initial registration period. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

The record reflects that the applicant was placed in removal proceedings on October 27, 1997. The record contains a Warrant of Removal issued on July 31, 1998, at Harlingen, Texas, following the final order of removal in absentia issued by the Immigration Judge, Harlingen, Texas, on April 17, 1998. It is noted that the Order of the Immigration Judge indicates "No Address Provided" for the applicant; it is unclear based upon the partial copy included in the record, whether the Form EOIR-33, notifying the court of the applicant's move to Florida, was properly completed and submitted as required.

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.