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

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DEC 06 200

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER  
[WAC 05 082 79460]

Date:

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) 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 applicant filed her initial TPS application with Citizenship and Immigration Services (CIS) on June 24, 2002, under receipt number SRC 02 210 55821. The Director of the Texas Service Center denied that application on September 7, 2002, because she found that the applicant failed to establish her eligibility for late initial registration.

On November 8, 2002, the applicant filed an appeal from the denial decision. On appeal, the applicant submitted a photocopy of an Employment Authorization Card valid from October 15, 2001 to July 5, 2002, issued to [REDACTED] as an alien who had been granted TPS under registration number [REDACTED] and a photocopy of a Honduran marriage certificate indicating that [REDACTED] were married in El Porvenir, Honduras, on June 27, 1992.

On November 24, 2004, the service center director granted the motion to reopen stating that the applicant had overcome the basis for the denial of the application. The service center director further stated that the application would not be approved until the applicant had completed a fingerprint check and was found not to have a criminal record. The applicant was fingerprinted, and her Federal Bureau of Investigation (FBI) fingerprint results report revealed that she was apprehended at the Douglas, Arizona, Port of Entry on February 18, 1999, when she applied for admission to the United States presenting a Form I-586, Border Crossing Card, issued to another individual. The applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act as an alien who sought to procure admission into the United States through fraud and was expeditiously removed to Mexico on February 18, 1999.

On April 11, 2005, the service center director denied the TPS application again because she found that the applicant had not established continuous physical presence in the United States since January 5, 1999, since she had been expeditiously removed from the United States on February 18, 1999.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 21, 2005, and indicated that she was re-registering for TPS or renewing her temporary treatment benefits.

The director denied the application on July 23, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration or renewal of her temporary treatment benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17. If an applicant is applying for renewal of temporary treatment benefits, he or she must have a pending TPS application.

In this case, the applicant has not previously been granted TPS. Therefore, she is not eligible to re-register for TPS or to renew temporary treatment benefits. Consequently, the director's decision to deny the application will be affirmed.

It is noted that the director's decision does not explore the possibility that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration.

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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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 initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. The record reveals that the applicant filed the current TPS application with CIS on December 21, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

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).

It has already been established that the applicant, during the initial registration period, was the spouse of an alien who had been granted TPS. However, the application must be denied for the reason discussed below.

*Continuously physically present* 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. 8 C.F.R. § 244.1.

*Brief, casual, and innocent absence* 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. 8 C.F.R. § 244.1.

The applicant was expeditiously removed from the United States on February 18, 1999, during the requisite period to establish continuous physical presence in the United States. 8 C.F.R. § 244.2(b). Since the applicant departed the United States under an order of expeditious removal, her absence from the United States during the requisite period cannot be considered to be "brief, casual and innocent" as defined at 8 C.F.R. § 244.1. Therefore, the applicant **cannot** establish continuous physical presence in the United States during the requisite period, and the application must be denied for this reason.

Furthermore, at the time of her expeditious removal, the applicant was found to be inadmissible to the United States under section 212(a)(6)(c)(i) of the Act as an alien who attempted to gain entry into the United States through fraud. While the issue of the applicant's inadmissibility was not raised by the director, the applicant is also ineligible for TPS because she is inadmissible to the United States under section 212(a)(6)(c)(i) of the Act and has not filed an application for waiver of grounds of inadmissibility. Therefore, the application must also be denied for this reason.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.