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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: **JUN 02 2006**  
[relates to [redacted]  
[WAC 05 089 70320]  
[SRC 03 026 55174]

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 (CSC), 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 record reveals that the applicant filed her initial TPS application on October 3, 2002, under CIS receipt number SRC 03 026 55174. The record reveals that on March 4, 2003, the Director, Texas Service Center (TSC) approved the application for TPS.

The applicant filed the instant Form I-821, Application for Temporary Protected Status, on December 28, 2004, and indicated that she was re-registering for TPS.

The director denied the instant re-registration application on July 26, 2005, because the CSC director determined that the evidence submitted by the applicant was not sufficient to establish her qualifying continuous physical presence in the United States since January 5, 1999.

On appeal, the applicant asserts her eligibility for TPS and submits evidence in support of her claim.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 under § 244.3;
- (e) is not ineligible under § 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 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.

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.

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

On appeal, the applicant states that she was previously granted TPS and that she has maintained her eligibility for TPS. The applicant also indicates that she never applied for asylum. In addition, the applicant submits copies of several receipt notices from the Service as well as copies of her previously issued Employment Authorization cards.

A review of the record of proceedings reflects that the applicant was apprehended by the United States Border Patrol on July 11, 1999, at or near Brownsville, Texas, while attempting to enter the United States illegally. In addition, the record reflects that the applicant was also order removed from the United States on March 7, 2000, under file number [REDACTED]. Therefore, the applicant could not have met the requirements that she had continuously resided in the United States since December 30, 1998. The applicant has, thereby, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for TPS will be affirmed.

Beyond the decision of the director, it also is noted that the applicant could not have established her qualifying continuous physical presence during the requisite time period. 8 C.F.R. § 244.2(b). Therefore, the application will also be denied for this reason.

It also is noted that the applicant has provided insufficient evidence to establish her eligibility for late registration. Therefore, the appeal will also be dismissed for this reason.

#### Sec. 244.14 Withdrawal of Temporary Protected Status.

(a) Authority of director. The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time upon the occurrence of any of the following: (Amended 11/16/98; 63 FR 63593)

(1) The alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status;

(c) Decision by AAU. If a decision to withdraw Temporary Protected Status is entered by the AAU, the AAU shall notify the alien of the decision and the right to a de novo determination of eligibility for Temporary Protected Status in deportation or exclusion proceedings, if the alien is then deportable or excludable, as provided by § 244.10(d). (Amended 11/16/98; 63 FR 63593)

It is also noted that the director erred in not withdrawing the applicant's TPS status because as stated above, applicant was apprehended by the United States Border Patrol on July 11, 1999, at or near Brownsville, Texas, while attempting to enter the United States illegally. Therefore, the applicant could not have met the requirements that she had continuously resided in the United States since December 30, 1998, or that she had been continuously physically present in the United States since January 5, 1999.

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.