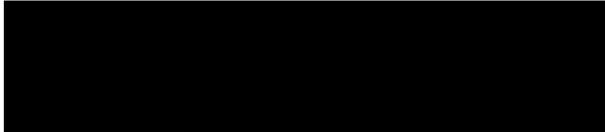


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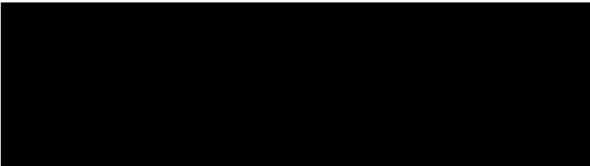
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **AUG 17 2007**  
[LIN 99 155 52499]  
[LIN 01 217 51200]  
[WAC 05 077 75639]

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the California Service Center. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The initial application was denied by the District Director, Denver, Colorado. A subsequent application for re-registration was approved by the Director, Nebraska Service Center (NSC). The current application for re-registration was first approved, and then denied, by the Director, California Service Center (CSC). The denial of the current application is now before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office, and will be remanded for further consideration and action. The decisions on the first and current applications for re-registration will be withdrawn, and will also be remanded for further consideration and action.

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 of the CSC first approved, and then denied the application on the basis that the applicant's prior TPS application had been denied and the applicant was not eligible for re-registration.

On appeal, counsel for the applicant submits a letter and additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant may apply for TPS during the initial registration period, or:

- (f) (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 initial registration period for Hondurans was from January 5, 1999, through August 20, 1999.

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

If the applicant is filing an application for 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 the applicant is applying to renew her temporary treatment benefits, she must have a pending TPS application.

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 Citizenship and Immigration Services (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).

The record reveals that the applicant filed a first Form I-821, Application for Temporary Protected Status, with the NSC on April 30, 1999, during the initial registration period (LIN 99 155 52499 relates). At the time of filing the application, the applicant listed her address as: [REDACTED], Commerce City, Colorado, 80022.

On August 28, 1999, the director of the NSC requested the applicant to submit evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. On June 29, 2000, the NSC transferred the case to the CIS office in Denver, Colorado, for further review and to conduct an interview of the applicant. On December 5, 2000, that office also requested the applicant to submit evidence to establish her qualifying continuous physical presence in the United States.

On March 20, 2001, the district director in Denver denied the application on the basis that the applicant had failed to establish her qualifying continuous physical presence in the United States during the requisite time period. The denial notice was mailed to the applicant at: [REDACTED], Denver Colorado, 80218, but returned as "abandoned, not known." The record of proceeding reveals that the applicant had notified CIS on or about February 28, 2001, that her address had changed to: [REDACTED], Brooklyn, New York, 11220.

The applicant filed a second Form I-821 on July 27, 2001 (LIN 01 217 51200 relates), and indicated that she was applying for re-registration for TPS. That application was approved by the director of the NSC on May 9, 2002.

The applicant filed the current Form I-821 (WAC 05 077 75639) on December 16, 2004, and again indicated that she was re-registering for TPS. The director of the CSC mailed the applicant a Form I-797, Notice of Action, indicating that the application had been approved on July 21, 2005. Two days later, on July 23, 2005, the CSC director mailed the applicant a letter stating that this same application had been denied.

The district director in Denver denied the initial application. The NSC director's approval of the application for re-registration is dependent upon the adjudication of the initial application. It appears that the applicant did not receive the initial denial, and therefore was unable to avail herself of her initial appeal rights. This, compounded with a subsequent incorrect approval of a TPS re-registration application, when the initial application had been denied, which was then followed by a denial of a subsequent application for re-registration, without further explanation or clarification, cannot be resolved without a thorough re-examination of all of the facts surrounding the numerous procedural errors that occurred during the adjudication of these applications. Since the CSC director's decision is dependent upon the adjudication of the prior applications, and it is not entirely clear as to whether the CSC director intended to approve or to deny the application, the approval of the first re-registration application, and the denial of the second re-registration application will be withdrawn and remanded for further consideration and action. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS offered to Salvadorans.

It is noted that as a result of being fingerprinted in connection with this application, CIS received a report from the Federal Bureau of Investigation (FBI) indicating that the applicant was previously deported from the United States to Honduras on July 18, 1988. However, on each of her Forms I-821, the applicant claimed that she had never been under immigration proceedings. The applicant also claims to have initially entered the United States in 1990, but to have last entered the United States on October 29, 1995 (on her initial application), and on February 27, 1996 (on applications for re-registration). These discrepancies in the record have not been explained and call into question the applicant's ability to document the requirements under the statute and regulations. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Furthermore, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any 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. (Comm. 1988).

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The initial application is remanded for further consideration and action. The decisions on the first and current applications for re-registration are withdrawn, and also remanded for further consideration and action.