

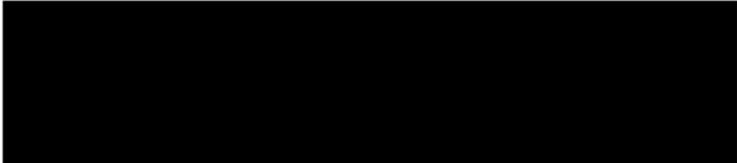
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FILE: [REDACTED] OFFICE: California Service Center DATE: **MAY 21 2007**  
[SRC 02 246 54585]

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. It is now on appeal before the Administrative Appeals Office (AAO). 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 director denied the application on the ground that the applicant failed to establish that she had been continuously physically present in the United States since January 5, 1999, as required for TPS applicants from Honduras.

On appeal the applicant submits additional documentation pertinent to her physical presence in the United States.

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 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 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.

Honduran nationals applying for TPS must demonstrate continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record shows that the applicant filed her initial Form I-821, Application for Temporary Protected Status, on July 5, 2002.

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

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). *See* 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. *See* 8 C.F.R. § 244.9(b).

The applicant's initial TPS application, filed with the Texas Service Center on July 5, 2002, was denied by the Director, California Service Center, on August 3, 2006, on the ground that the evidence of record failed to establish the applicant's continuous physical presence in the United States since January 5, 1999, as required for TPS applicants from Honduras. The director noted that although the applicant's Form I-94 showed that she first entered the United States in 1990, CIS records indicated that the applicant made a subsequent entry into the country on September 21, 2001, and thus did not maintain continuous physical presence in the United States.

On appeal the applicant submitted photocopies of a notice to her from the Internal Revenue Service in December 1997, a New Jersey state immunization record in the applicant's name with entries from 1991, and

a series of documents involving the applicant during the years 2002-2006. There is no new documentation from the years 1998-2001. The materials submitted on appeal do not overcome the ground for denial of the initial application because they do not establish that the applicant has been continuously physically present in the United States since January 5, 1999, as required for TPS applicants from Honduras.<sup>1</sup> Accordingly, the director's denial of the initial TPS application will be affirmed on that ground.

Beyond the decision of the director, the record does not establish that the applicant – who filed her initial TPS application on July 5, 2002, nearly three years after the close of the initial registration period for Honduran nationals on August 20, 1999 – was eligible for late registration under any of the qualifying criteria enumerated at 8 C.F.R. § 244.2(f)(2). Accordingly, the application must also be denied on that ground.

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

On February 7, 2005, the applicant filed a second Form I-821, which she identified as an application to re-register for TPS. The Director, California Service Center, denied that application [WAC 05 155 75316] on August 3, 2006 (the same date as the initial application), on the ground that the denial of the initial TPS application made the applicant ineligible to re-register for TPS. Only those individuals who are granted TPS are required (or eligible) to re-register annually. *See* 8 C.F.R. § 244.17. Since the applicant has not been previously approved for TPS, she is not eligible to re-register for TPS.

An alien applying for Temporary Protected Status, or TPS, 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 that burden.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> The AAO notes that in the Form I-831, Record of Deportable/Inadmissible Alien, prepared by a Border Patrol Agent at the time of the applicant's arrest for unlawful entry into the United States on September 21, 2001, the applicant stated that she and her children left her residence in Honduras on August 21, 2001, to make their way northward to the U.S. border.