



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

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FILE: [REDACTED]  
[EAC 07 021 50164]

OFFICE: Vermont Service Center

DATE: **JAN 03 2008**

INRE: Applicant:



APPLICAnON: 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 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, Vennont Service Center (VSC). 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 he was eligible for late TPS registration.

On appeal the applicant asserts that he is eligible for TPS because he was placed in removal proceedings.

Section 244(c) of the Act, and the related regulations in 8 C.P.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.P.R. § 244.4; and
- (t)
  - (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 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. The applicant filed his initial Form 1-821, Application for Temporary Protected Status, on October 30, 2006 – more than seven years after the close of the initial registration period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he met at least one of the 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).

On February 8, 2007, the CSC requested the applicant, who claims to have entered the United States without inspection on September 30, 1998, to submit evidence that he was eligible for late registration and met the continuous residence and continuous physical presence requirements for TPS applicants from Honduras. The applicant responded with assorted documentation that addressed the issues of his residence and physical presence in the United States, but not his late filing for TPS.

On May 8, 2007, the director denied the application on the ground that the applicant failed to establish that he was eligible for late TPS registration under any of the qualifying conditions enumerated at 8 C.P.R. § 244.2(1)(2).

On appeal counsel asserts that the applicant is eligible to apply for TPS as a late initial registrant because he was placed in removal proceedings, and section 244 of the Act permits an alien to apply for TPS in such a situation. <sup>1</sup> Counsel's statement is true insofar as placement in removal proceedings does not affect an alien's right to apply for TPS. However, a TPS applicant who is in removal proceedings must still establish, like every other TPS applicant, that (s)he either filed for TPS during the initial registration period or satisfied one of the qualifying conditions in 8 C.F.R. § 244.2(f)(2) during the initial registration period to be eligible for late initial registration. Placement in removal proceedings, in other words, does not change the filing requirements for a late initial registrant.

While the record indicates that the applicant's wife, [REDACTED], included the applicant in her pending asylum application on December 26, 2002, shortly after their marriage on November 23, 2002, this was long after the initial registration period for TPS applicants from Honduras closed on August 20, 1999. Thus, the applicant does not qualify for late registration under 8 C.F.R. § 244.2(f)(2)(ii) because his derivative asylum application was not yet pending during the initial registration period.

Accordingly, there is still no evidence in the record that the applicant is eligible for late registration under any of the criteria enumerated at 8 C.F.R. § 244.2(f)(2). The director's denial of the application will therefore be affirmed.

An alien applying for 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> Counsel indicated on the Fonn I-290B, filed on May 21, 2007, that a brief would be submitted within 30 days. No such brief has been submitted.