

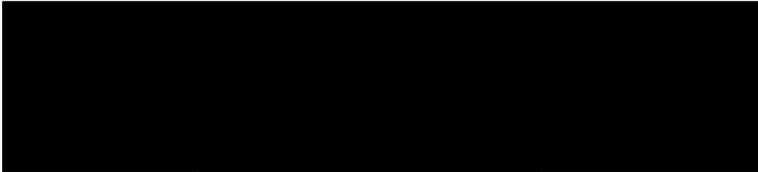


**U.S. Citizenship
and Immigration
Services**

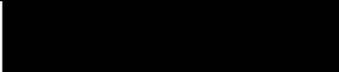
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FILE:



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OFFICE: VERMONT SERVICE CENTER

DATE: **JAN 03 2008**

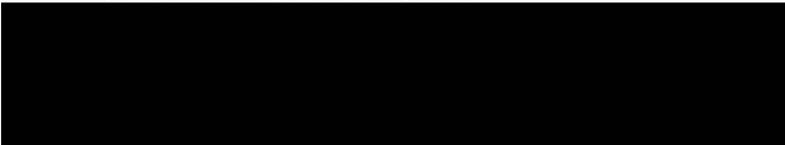
INRE:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a citizen of Honduras who is applying for 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 because the applicant failed to establish that she was eligible for late registration.

On appeal, counsel asserts that the application was improperly denied as ample and sufficient evidence has been submitted to support the applicant's application. Counsel states the applicant has been residing in the United States since her entry as a non-immigrant visitor on March 23, 1986, has been married to her spouse since August 3, 1998, has two children born in 1989 and 1996, and is the beneficiary of a Form I-130 petition filed in 2001. Counsel contends, "[a]ll of the aforementioned documents are official in nature and place the respondent here in this country when TPS was first created."

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.

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.

The record reveals that on January 31, 2005, the applicant filed her initial Form 1-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) under receipt number WAC0514775929. The Director, California Service Center, denied that application on May 1, 2006, as the applicant failed to establish that she was eligible for late registration.

The applicant filed the current Form 1-821 application on May 26, 2006, and indicated it was her initial application for TPS.

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 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).

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on June 13, 2007.

The AAO agrees with counsel's assertion that the applicant has submitted sufficient evidence to establish that she has been continuously residing in the United States "when TPS was first created." However, this was not the basis for the denial of the TPS application. As the applicant failed to file her TPS application *during the initial registration period*, she is not entitled for the benefit being sought regardless of the documentation submitted to establish her continuous residence in the United States. The applicant, however, can be eligible for TPS if she meets any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). The applicant has not submitted any evidence to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2).

It appears that counsel, on appeal, is implying that the applicant is eligible for late registration under 8 C.F.R. § 244.2(f)(2)(ii) as she is the beneficiary of a Form 1-130 petition filed in 2001.

The regulation at 8 C.F.R. § 244.2(f)(2) states in order to qualify for late registration, the applicant must provide evidence that she was eligible for late registration during the initial registration period. The record indicates that the Form 1-130, Petition for Alien Relative, was not filed until April 30, 2001, more than 20

months after the closing of the initial registration period. Although the petition was approved on December 15, 2005, under section 203 (a)(2)(A) of the Immigration and Nationality Act (the Act), individuals who are awaiting preference allocation for an immigrant visa under section 203 of the Act are not eligible for late registration under 8 C.F.R. § 244.2(e)(2).

Consequently, the director's decision to deny the application for IPS will be affirmed.

An alien applying for IPS 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.