

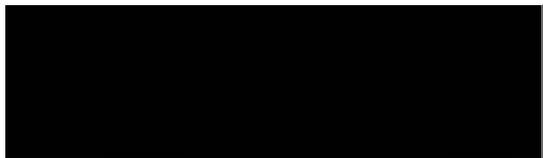
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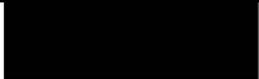


U.S. Citizenship  
and Immigration  
Services

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FILE:



[WAC 0507475581]

OFFICE: California Service Center

DATE:

**JAN 04 2008**

INRE:

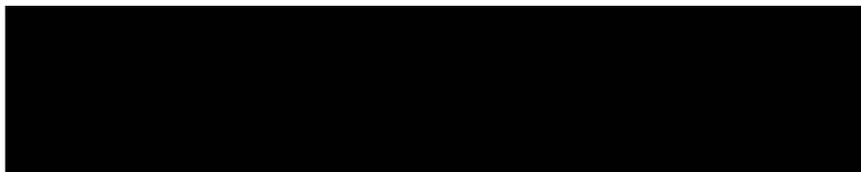
Applicant:



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.

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center (CSC). It is now on appeal before the Administrative Appeals Office (AAO). The director's decision will be withdrawn. The appeal will be sustained and the application approved.

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.

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 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 the applicant filed her initial Form 1-821, Application for Temporary Protected Status, on December 13, 2004 - more than five 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 she 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 5, 2006, *the* CSC Director issued a Notice of Intent to Deny (NOIO) requesting the applicant to submit documentary evidence of her eligibility for late TPS registration, her nationality/identity, and her continuous residence and physical presence in the United States since the requisite dates for Honduran nationals. The applicant responded in March 2006 with some additional documentation. On August 1, 2006, the director denied the application on the ground that the evidence submitted in response to the NOIO was insufficient to establish her eligibility for late registration.

The applicant filed a timely appeal on August 25, 2006. In his appeal brief counsel asserts that the applicant had an application for adjustment of status pending during the initial registration period in 1999, which qualifies her for late TPS registration under 8 C.F.R. § 244.2(f)(2)(ii). Counsel also asserts that the applicant meets the other eligibility requirements for TPS.

With respect to the late registration issue, the record confirms that the applicant - who claims to have originally entered the United States, without inspection, in 1993 or 1994 - filed a Form 1-485, Application to Register Permanent Residence or Adjust Status, at the District Office in Hartford, Connecticut, on August 27, 1996. On April 21, 1997, the applicant was granted a two-year "Permanent Residence Card," valid until April 21, 1999.

On February 20, 1999 - two months before the expiration of his conditional permanent resident status - the applicant filed a Form 1-751, Application to Remove Conditions on Residence [receipt no. EAC 99 14800019]. On May 1, 2001, after the applicant failed to provide sufficient evidence of a proper qualifying marriage, the District Director terminated the applicant's conditional resident status. In his decision the District Director stated that the applicant could request a review of his determination in deportation proceedings.

On July 18, 2001, the applicant filed a motion to reopen at the Hartford District Office. On December 31, 2001, the District Director denied the motion on the ground of abandonment because the applicant's spouse did not appear at a scheduled appointment on November 19, 2001, and did not furnish a reason for his absence or request a rescheduling prior to that date. The District Director noted in the decision that the applicant was precluded from appealing an abandonment denial, but could file a motion to reopen under 8 C.F.R. § 103.5.

The applicant submitted another motion to reopen through counsel, which bears a receipt stamp of the Hartford District Office dated May 12, 2002. <sup>1</sup> In the motion counsel asserts that the applicant appeared for the scheduled appointment on November 19, 2001, but that her husband could not attend because he had been hospitalized since August. According to counsel, the applicant was advised by a district adjudication officer (DAO) that no interview could be conducted without the husband (who had filed the initial Form 1-130, Petition for Alien Relative), but that a late request for rescheduling would be accepted under the circumstances. Counsel states that such a request was sent to the Hartford District Office overnight. As evidence thereof, the record includes a note from the applicant's husband on the Form G-56 that scheduled the appointment which explained his current incapacity and inability to be present. The Form G-56 was signed and dated by the applicant's husband on November 19, 2001, and bears a receipt stamp of the Hartford District Office dated November 20, 2001. This document, and the supporting materials relating to the hospitalization of the applicant's husband, were not mentioned by the District Director in his denial decision of December 31, 2001. They refute his finding that the applicant had abandoned her Form 1-751 application.

The Hartford District Office does not appear to have taken any definitive action on the motion to reopen received in May 2002. Another Form G-56 was issued by the Hartford District Office to the applicant and her husband on November 22, 2002, which scheduled an appointment with a DAO on November 27, 2002, in regard to "[y]our petition for alien relative and/or your adjustment status." After that date, however, there is no documentation in the record of proceedings pertaining to the applicant's Form 1-751, to remove the conditions on her permanent resident status, or pertaining to her motion to reopen. CIS records do not indicate any final adjudication of the Form 1-751 application.

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<sup>1</sup> Counsel stated in his cover letter that the motion had been received at the Hartford District Office on January 14, 2002, though the evidence of record does not substantiate a filing at that time.

As far as the record shows, therefore, the Form 1-751 the applicant filed in February 1999 to remove the conditions on her permanent resident status is still "subject to further review" within the meaning of 8 C.F.R. § 244.2(f)(2)(ii) because no final action has been taken by the Hartford District Office on the motion to reopen it received in May 2002. Thus, the TPS application filed by the applicant in December 2004 qualifies for late initial registration.

The applicant has established her Honduran nationality, in accordance with 8 C.F.R. § 244.2(a). Based on all the evidence of record, the applicant has also established her continuous physical presence in the United States since January 5, 1999, and her continuous residence in the United States since December 30, 1998, in accordance with the requirements of 8 C.F.R. § 244.2(b) and (c).<sup>2</sup> The record does not demonstrate that the applicant is inadmissible to the United States or otherwise ineligible for TPS.

The AAO concludes that the applicant is eligible for TPS. The director's decision denying the application will therefore be withdrawn. The appeal will be sustained, and the application approved.

As always in these proceedings, the burden of proof rests solely with the applicant. *See* section 291 of the Act, 8 U.S.c. § 1361.

**ORDER:** The decision of the ESC Director, dated August 1, 2006, is withdrawn. The appeal is sustained, and the application approved.

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<sup>2</sup> The record includes photocopies of the applicant's passport pages showing that she had two short trips to Honduras in May 2000 and May 2001, which the AAO views as "brief, casual, and innocent" absences from the United States within the meaning of 8 C.F.R. § 244.1. Thus, they do not break the applicant's continuous residence and physical presence in the United States for TPS purposes.