U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

M-1

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUL 7 2004

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:

[redacted]

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

The applicant claims to be a native and citizen of Honduras and is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director determined that the applicant failed to submit evidence to establish that he was eligible for filing after the initial registration period from January 5, 1999, to August 20, 1999. The director also determined that the applicant had failed to establish that he had been continuously physically present in the United States since January 5, 1999. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the applicant is the spouse of a current TPS registrant, and he is eligible for TPS by virtue of a previous marriage to his spouse in Honduras. Counsel submits additional evidence of the applicant's residence 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 as designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

(a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 TPS 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 condition described in paragraph (f)(2) of this section.

The term *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.

The term *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.

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 in the United States since January 5, 1999. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. Subsequent extensions of the TPS designation have been granted with the latest extension valid until January 5, 2005, upon the applicant's re-registration during the requisite time period.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

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 initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reflects that the applicant filed his TPS application on June 17, 2002, after the initial registration period for Hondurans had closed. In support of his claim, the applicant submitted a December 15, 1998 rent receipt; a statement from Manuel Ramos, attesting to the applicant's residence in the United States since December 1998; an Employment Authorization document for his spouse; and evidence that he and Bexis Migdalia Guillen, were married in New York State on September 29, 2001.

On September 12, 2002, the applicant was requested to submit the following: (1) evidence of identity; (2) evidence to establish that he had continuously resided in the United States since December 30, 1998; (3) evidence to establish that he had been continuously physically present in the United States from January 5, 1999 to the date of filing the application; and (4) evidence to establish that he was eligible for filing after the initial registration period from January 5, 1999, to August 20, 1999. While the applicant, in response, submitted evidence of his residence in the United States, he failed to submit evidence of identity, and evidence to establish his eligibility for late registration. On May 2, 2003, the director denied the application.

Aliens applying under the provisions for late initial registration must prove that they are eligible because during the initial registration period of January 5, 1999, through August 20, 1999, they fell within the provisions described in paragraph (f)(2) above.

On appeal, counsel asserts that the applicant and his wife were initially married in Honduras on December 12, 1996. He states that the applicant believed he needed to show proof that his marriage had taken place in the United States, so the applicant and his spouse were married again on September 29, 2001. Counsel states that the applicant subsequently learned that his marriage in Honduras was valid. He submits the following evidence:

1.) rent receipts dated December 15, 1998 and January 15, 1999;
2.) a letter from Manuel Ramos, who states he has personal knowledge of the applicant's presence in the United States since December 19998;
3.) a copy of a birth certificate for the applicant's daughter, who was born in the United States on April 5, 2002;
4.) an Internal Revenue Service (IRS), Form W-2, Wage and Tax Statement for the applicant for the year 2001; and,
5.) paycheck stubs dated August 31, 2000, and May 15, 2002.

Counsel also submits a copy of a certificate of marriage, with an English translation, which he asserts is proof of the applicant's marriage on December 12, 1996, in Honduras, to Bexi Migdalia Lizama-Canela. The applicant did not furnish either the original or a certified copy of the December 12, 1996 certificate of marriage to document his claim that he and his spouse had been previously married in Honduras.

The applicant has failed to submit any evidence to establish that he was married to a TPS registrant during the initial registration period from January 5, 1999 through August 20, 1999. The applicant's marriage, as documented, did not take place until September 29, 2001, after the initial registration period had expired. Therefore, it must be concluded that the applicant has failed to establish that he met the qualification for late registration, and to overcome the findings of the director pursuant to 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish eligibility for late registration will be affirmed.

In addition, the evidence submitted does not establish the applicant's continuous physical presence in the United States from January 5, 1999 to the date he filed the application. The applicant claims to have lived in the United States since December 1, 1998. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support his claim of physical presence since January 5, 1999; however, the applicant has not provided sufficient evidence for the entire period. While the applicant has submitted a letter from Manuel Ramos, attesting to the applicant's presence in the United States during the requisite period, that letter was not notarized. Moreover, the statement alone does not establish that the applicant has met the physical presence criteria for TPS. In addition, the only evidence the applicant

submitted for the years 1999 and 2000 consisted of one rent receipt for each year. While the applicant submitted an Internal Revenue Service (IRS), Form W-2, Wage and Tax Statement, for the year 2001, and a copy of a birth certificate for his daughter who was born in the United States on April 5, 2002, this evidence does not conclusively establish that the applicant has been physically present in the United States since January 5, 1999. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the physical presence requirement described in 8 C.F.R § 244.2(b). Consequently, the director's decision to deny the application for temporary protected status will be affirmed on this basis as well.

The burden of proof is upon the applicant to establish 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.