U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

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: 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.

Cindy M. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The applicant is a native and 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 determined that the applicant failed to establish that she was eligible for filing his TPS application after the initial registration period from January 5, 1999 to August 20, 1999. The director, therefore, denied the application.

On appeal, the applicant states that she submitted all of her documents and believes they arrived late. The applicant requests that her case be reopened. The applicant also resubmitted documentation previously provided.

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 [now, the Secretary, Department of Homeland Security (Secretary)] 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 CIS director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section

Continuously physically present, as used 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.

Continuously resided, as used 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.

Brief, casual, and innocent absence, as used in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

(1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;

(2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and

(3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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. On May 11, 2000, the Attorney General, (now the Secretary), 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 period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he or she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

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).

On May 1, 2002, the applicant was provided the opportunity to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing her residence in the United States since December 30, 1998 and her physical presence in the United States from January 5, 1999. The applicant, in response, provided a photocopy of the first page of her asylum application. In addition, the applicant submitted a letter dated July 28, 2000 from the Vermont Service Center director who informed the applicant that she had filed a TPS application under the late registration provision, and informed her under what conditions she would be allowed to file her TPS application under this provision. The record also contains a copy of a letter from the applicant dated September 1, 2000, in which the applicant stated that she was responding to the director's July 28, 2000, letter. According to the applicant she was providing copies of her previous TPS and employment authorization applications, which were received by CIS on May 22, 2000. The TPS and employment authorization applications were both received by CIS on September 5, 2000.

The applicant also provided the original Form I-797 dated September 18, 2000 informing the applicant that her TPS application was being returned so that she could attach a fee of $100 for her employment authorization application. The applicant provided evidence that she had a pending asylum application when she initially attempted to file. The applicant also furnished copies of employment authorization cards issued to her from October 5, 1994 to October 6, 1999.

The director determined that the applicant failed to establish her eligibility for late registration. According to the director, the applicant's asylum application was administratively closed on June 15, 2000, because the applicant withdrew the application. The director found that the applicant filed her TPS application on July 17, 2001, more than 60 days after the termination of the qualifying condition, and therefore denied the application.

On appeal, the applicant states that she provided all of her documents and requests that her case be reopened.

The record indicates the following:

1. The applicant initially attempted to file her TPS application and it was received by CIS on May 22, 2000. The applicant included her A-file number (A73 573 906) from her asylum application on the TPS application.

2. In the July 28, 2000 letter, the director acknowledged that the applicant had filed a TPS application with requested consideration under the provisions for late registration. The director then specifically instructed the applicant as to what criteria she had to meet in order to file under late registration. The director then told the applicant that if she met one of the criteria, she was to resubmit her application with the required evidence.

3. The applicant subsequently resubmitted her application, including a copy of part of her asylum application, which was received by CIS on <u>September 5, 2000</u>.

4. The applicant was then instructed to resubmit her TPS and employment authorization applications with a fee of $100. However, the applicant had employment authorization based on her asylum application that would not expire until October 5, 2000.

5. The applicant attempted to file her TPS application on two occasions; however, her application was returned to her both times. It is not clear, however, why the July 28,

2000 letter was issued by the director, as agency records indicate that the applicant was eligible to apply for late registration under 8 C.F.R. § 244.2(f)(2) and (g) at that time.

6. The application was again submitted by the applicant and received by CIS on July 17, 2001.

The applicant initially filed her application while her asylum application was pending. The Form I-821 still bears the September 5, 2000 acceptance date; this date is within the requisite timeframe for late registration under 8 C.F.R. § 244.2(g). It is noted that although the director did not acknowledge the applicant's eligibility the first two times that she attempted to file the Form I-821, that it was acknowledged at the time of denial when the director indicated that the applicant had now submitted the documentation too late to be considered eligible for late registration.

Consequently, the applicant has submitted sufficient evidence to establish that she has met the criteria described in 8 C.F.R. § 244.2(f)(2) and (g). Given the circumstances surrounding the applicant's numerous attempts to file her application in a timely manner, and based on the record, the applicant has established her eligibility for TPS. Therefore, the director's decision will be withdrawn and the application will be approved.

An alien applying for temporary protected status 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. Here, the applicant has met this burden.

ORDER: The appeal is sustained.