U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: OCT 22 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.

Cindy M. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

The applicant is a native and 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 he was eligible for late registration.

On appeal, counsel for the applicant provides a statement, an affidavit from the applicant, and additional evidence in support of the appeal.

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 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 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 the applicant filed his initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on June 20, 2001.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he 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 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 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

On March 13, 2002, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The director also stated that if this application was to re-register for TPS, the applicant must submit his initial TPS receipt number or a copy of his receipt or approval notice. The applicant, in response, provided documentation relating to his residence and physical presence in the United States. In support of establishing his eligibility for late registration, the applicant submitted a photocopy of his Marriage License, Denton County, Texas, indicating he was married to [redacted] at Holy Trinity Church, Dallas, Texas, on April 21, 2001. The applicant also submitted a photocopy of the employment authorization card (EAD) of his wife, [redacted] indicating approval as a TPS applicant under 8 C.F.R. § 274a.12 (a)(12), and valid from December 13, 2001 through July 5, 2002.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on September 6, 2002.

On appeal, counsel asserts that there is no required date by which a marriage must have occurred in order to render the spouse of an alien currently registered for TPS as eligible for late registration. Counsel states that the director erroneously stated the marriage must have occurred by December 1998, and did not inform the applicant of that requirement in the Notice of Intent to Deny. In addition, counsel asserts that the applicant was already married to [redacted] in Honduras on July 19, 1993, and that they have never divorced or abandoned their marriage. An affidavit from the applicant indicates that the 2001 marriage in Texas was a renewal of vows because the couple wanted to have a church wedding that they could not afford when they originally married in Honduras in 1993. Counsel also submits a marriage certificate between the applicant and [redacted] dated July 19, 1993, at Moroceli, El Paraiso, Honduras, issued on December 28, 2000.

The director erred in stating that the marriage must have existed "prior to December 30, 1998"; this is, rather, the date by which nationals of Honduras must have continuously resided in the United States. The director's statement that: "You were not married to [redacted] on December 30, 1998, and therefore you do not meet the definition of a spouse for the purposes of Temporary Protected Status," is hereby withdrawn.

However, counsel's assertion is not persuasive that there is no required period by which a marriage must have occurred in order to render the spouse of an alien currently registered for TPS as eligible for late registration. If an applicant has not registered for TPS "during the initial registration period announced by public notice in the *Federal Register*" [8 C.F.R. § 244.2(f)(1)], the applicant may register in accordance with the regulation at 8 C.F.R. § 244.2(f)(2). This regulation specifies that an applicant may register: "[d]uring any subsequent extension of such designation **if at the time of the initial registration period** [emphasis added]" the applicant meets one of the four criteria detailed at 8 C.F.R. § 244.2(f)(2)(i) through (iv). The regulation clearly indicates that the criteria making one eligible for late registration must have existed during the initial registration period. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999.

On appeal, counsel and the applicant further assert that the April 2001 marriage in Texas was specifically for the purpose of affording the couple a church wedding and was merely a renewal of vows of the marriage that took place on July 19, 1993, in Honduras. This assertion, however, is not supported by the evidence of record. The applicant's affidavit submitted on appeal states in part:

> Since we have been married, we have always put ourselves out as a married couple and we have never considered divorce. After we were together in the United States, I had arrived in the United States in 1994 and my wife joined me in 1998, we lived together as husband and wife [sic].

Contrary to this assertion, the record indicates that both the applicant and his wife have presented themselves as unmarried to CIS. The initial Form I-821, Application for Temporary Protected Status, of the applicant's spouse, [redacted] filed on June 21, 1999, certified under penalty of perjury, indicates her marital status as "Single" and does not mention the applicant at all at "Part 3. Information about Your spouse and children." CIS database records indicate the spouse's marital status was changed to "married" on July 19, 2001. Further, the applicant submitted his original pay stub dated March 17, 2000, indicating "Taxable Marital Status: Single." The record contains no other corroborative evidence of the 1993 Honduras marriage. The applicant has failed to explain why his wife certified that she was single on her initial TPS application and failed to explain why evidence presented in his name for the year 2000 indicated he was single, if the couple considered themselves to have been married since 1993. In addition, the applicant has provided no explanation as to how the Honduran marriage document was obtained in the year 2000 while the couple was stated to be in the United States. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has not conclusively established that he was married in Honduras in 1993 to his current spouse.

While the evidence of record confirms that the applicant's wife was granted TPS, the record also shows that the applicant was not married until April 21, 2001. In order to be eligible for late registration, the qualifying relationship must have existed during the initial registration period. 8 C.F.R. § 244.2(f)(2). Since the applicant, during the initial registration period, cannot establish that he was the spouse of an alien currently eligible to be a TPS registrant, he is not eligible for late registration. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

It is noted that the record includes an additional application for Temporary Protected Status filed on July 14, 2003, receipt number SRC-03-204-52449. This application was received subsequent to the September 6, 2002,

denial of the applicant's initial TPS application, and is marked as a new initial application for Temporary Protected Status. It also is noted that on this application the applicant certified under penalty of perjury that the date and place of his present marriage was July 19, 1993, in Honduras, while, on his initial application, the applicant certified that his present marriage took place on April 21, 2001, at Dallas, Texas. This July 14, 2003, application has not been adjudicated.

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. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.