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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 27 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.

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, California 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: 1) eligibility for late registration; 2) continuous residence in the United States since December 30, 1998; and, 3) continuous physical presence in the United States since January 5, 1999.

On appeal, the applicant submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 244.3;

(e) Is not ineligible under § 244.4; and

(f) (1) Registers for Temporary Protected Status during the initial registration period announced by pubic 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.

The phrase brief, casual, and innocent absence, as defined 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 in the United States since January 5, 1999. 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.

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed her application with the Citizenship and Immigration Services (CIS) on May 9, 2003.

The burden of proof is upon the applicant to establish that 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 her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

The first issue in this proceeding is whether the applicant has established that she is eligible for late initial registration.

The record of proceedings confirms that the applicant filed her application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse/child of an alien currently eligible to be a TPS registrant, and 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 director determined that the applicant had failed to establish she was eligible for late registration and denied the application on November 18, 2003.

On appeal, the applicant states that her husband has also applied for TPS. She further states that she has two children who were born in the United States. The applicant submits the following:

1. a photocopy of the biographic pages of her Honduran passport

2. a California License and Certificate of Marriage indicating that [redacted] and [redacted] both citizens of Honduras, were married in Daly City, California, on May 14, 2000;

3. a California birth certificate indicating that [redacted] was born in San Francisco, California on September 11, 2002, to [redacted] and [redacted] both citizens of Honduras;

4. a California birth certificate indicating that [redacted] was born in San Francisco, California, on February 25, 2001, to [redacted] and [redacted] both citizens of Honduras;

5. an Employment Authorization Document (EAD) indicating that [redacted] has been granted TPS (A94 291 810); and,

6. the biographic pages of a Honduran passport belonging to [redacted]

While the evidence of record confirms that the applicant's husband was granted TPS, the record also shows that the applicant was not married until May 14, 2000. As stated previously, the initial registration period for Honduras expired on August 20, 1999. 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, was not the spouse of an alien currently eligible to be a TPS registrant, she is not eligible for late registration. The applicant has not submitted any evidence to establish that she has met any of the other criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS on this ground will be affirmed.

The second issue to be addressed is whether the applicant has submitted sufficient evidence to establish continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999.

The director noted that the applicant did not enter the United States until December 28, 1999, and therefore, had not maintained continuous residence in the United States since December 30, 1998, or continuous physical presence in the United States since January 5, 1999. The director, therefore, denied the application on November 18, 2003, because the applicant had not established continuous residence and physical presence in the United States during the requisite periods.

On appeal, the applicant has not made a statement or provided any evidence to establish her qualifying continuous residence in the United States since December 30, 1998, or her continuous physical presence in the United States since January 5, 1999.

The applicant indicates on the Form I-821, Application for Temporary Protected Status, that she first entered the United States without inspection on December 28, 1999. In order to qualify for Temporary Protected Status, Hondurans are required to have continuously resided in the United States since December 30, 1998, and been physically present in the United States since January 5, 1999. Since the applicant did not enter the United States until December 28, 1999, she cannot establish continuous residence and physical presence in the United States during the requisite periods. She has, thereby, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status on this basis will be affirmed.

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.