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**U.S. Citizenship
and Immigration
Services**

M

[REDACTED]

FILE: [REDACTED]
[SRC 02 233 51722]

Office: TEXAS SERVICE CENTER

Date: JAN 24 2005

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 N. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, on March 14, 2003. On April 10, 2003, the applicant filed a timely appeal. The director treated this as a Motion to Reconsider, and on April 24, 2003, concluded that the submitted documentation did not overcome the denial. Subsequent to this decision, the applicant filed an appeal on June 16, 2003, that is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

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 denied the application because the applicant failed to establish she was eligible for late registration. The director also determined that the applicant had failed to establish her continuous physical presence in the United States during the requisite period.

The applicant filed an appeal on April 10, 2003. The applicant stated that she has been living in the United States since the year 1998. She stated that due to fear and lack of employment she did not apply at the time of the initial registration period. The applicant also asked that her case be reopened and that she be given: "the opportunity to be legal in this country in which a lot of difficulty [sic] I have lived here without having a better opportunity in employment and also to pay my taxes [sic]." The applicant submitted additional evidence in support of her appeal.

The director treated this as a motion to reconsider and found that the application did not include documentary evidence that the applicant qualified for late registration, and, therefore, the documentation did not overcome the ground for denial. The director's order stated that the "petition remains denied."

The regulation at 8 C.F.R. § 103.3(a)(1)(iv), provides that the AAO is the appellate body which considers cases under the appellate jurisdiction of the Associate Commissioner, Examinations. Pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(iv), if the reviewing official determines that favorable action is not warranted, that official forwards the appeal and the related record of proceedings to the AAO in Washington, D.C. In this instance, the appeal to the service center director's decision was timely filed, and the director determined that favorable action was not warranted. The director erred in failing to send the April 10, 2003, appeal to the AAO, and by addressing the timely appeal as a motion to reconsider. Therefore, the director's decisions and both appeals will be considered in this decision.

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.

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 since January 5, 1999. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until July 5, 2006, 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 initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on July 5, 2002.

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 is eligible for late 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 fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for late initial registration. See 8 C.F.R. § 244.2(g).

On January 24, 2003, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant, in response, provided documentation relating to her residence and physical presence in the United States. The applicant also submitted an undated affidavit stating that she entered the United States on September 10, 1998, was aware of the TPS program, and believed that her former husband had filed TPS applications for her and her children. She also stated when she asked her former husband what had happened to her employment authorization documents, he intimidated her and said that immigration authorities would arrest her and her minor children.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on March 14, 2003.

On initial appeal, the applicant stated she did not apply the first time due to fear of her situation and lack of employment. The applicant also submitted a Final Judgment of Dissolution of Marriage, issued on September 9, 2002, by the Circuit Court Judge of the 11th Judicial Circuit, dissolving the marriage between the applicant and

The applicant submitted evidence in an attempt to establish her eligibility for late registration and her qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file her Form I-821, Application for Temporary Protected Status, within the initial registration period.

The applicant did not submit evidence to establish that she and her former husband were married during, or prior to, the initial registration period and that her former husband was a TPS registrant. The applicant has not submitted sufficient evidence to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2) and (g). Consequently, the director's conclusion that the applicant had failed to establish her eligibility for late registration will be affirmed.

The second issue raised by the service center director is whether the applicant established her continuous physical presence in the United States since January 5, 1999.

On the April 10, 2003 appeal, the applicant stated that she was submitting additional evidence to demonstrate that she has been living in the United States since 1998. In support of the appeal, the applicant submitted:

1. Bell South customer billing statements for: January, February, March, July, August, and December 1999; December 2000; and, January, February, March, April, July, August, October, and November 2001;
2. A photocopy of the biographic page of her Honduran passport issued on June 28, 2001, by the Consulate General, Miami, Florida;
3. A photocopy of the Final Judgment of Dissolution of Marriage between the applicant and [REDACTED] dated September 9, 2002;
4. Shipping receipts from Call Express, Miami, Florida, dated in 2003, and from [REDACTED] Miami, Florida, dated April 14, 2001 and April 14, 1999;
5. A [REDACTED] Motors receipt dated April 22, 2003;
6. A letter from [REDACTED] Hialeah, Florida, attesting that the applicant and her daughters lived with her from September 1998 through August 2000;
7. A [REDACTED] Statement of Account, for the period November 21, 2002 through December 18, 2002;
8. A Certificate of Completion of English classes dated April 25, 2002;
9. Photocopies of money transfer receipts dated 3/5/2002 and 9/16/2001;
10. A Certificate of Completion, Florida Department of Highway Safety and Motor Vehicles dated 10/30/01; and,
11. A Certificate of Title, State of Florida, issued November 25, 2002, for a vehicle.

It is noted that the applicant's social security number as it appears on the 11th Judicial Circuit Final Judgment of Dissolution of Marriage differs from the applicant's social security number as it appears on her Internal Revenue Service Form 1040, U.S. Individual Income Tax Return, and accompanying schedules, for 1999. Two of the shipping receipts listed above at Number 4, are dated April 14, 1999 and April 14, 2001; however, it appears the date has been altered as they otherwise list the same invoice number, same cargo, and specific information. The Final Judgment of Dissolution of Marriage, at Number 3 above, contains correction fluid in the address. In addition, the Bell South billing statements appear to have been altered. 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, therefore, has failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application for temporary protected status on this ground will also be affirmed.

Beyond the decision of the director, the applicant also has not established her continuous residence from December 30, 1998. The record does not contain evidence establishing the applicant's date of entry into the United States and her continuous residence since December 1998. As noted above, the documents covering the year 1999 appear to have been altered, or contain information that conflicts with other documentation.

In conclusion, the evidence submitted by the applicant on appeal did not overcome the findings of the director, and the application must be denied.

The applicant submitted a subsequent appeal on June 16, 2003. Due to the circumstances surrounding the initial appeal, this appeal is also considered in the final determination made, although this would be considered as a late appeal (or motion), as it was filed more than 33 days from the director's decision.

In this appeal, the applicant reiterates her request that her case be accepted and that she be given: "the opportunity to be legal in this country in which a lot of difficulty [sic] I have lived here without having a better opportunity in employment and also to pay my taxes." The applicant does not submit any additional evidence in support of her claim. The applicant has not submitted any evidence to establish her eligibility for late registration described in 8 C.F.R. § 244.2(f)(2), or her continuous residence and continuous physical presence in the United States during the requisite periods. For these reasons, this appeal also must be dismissed.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden

ORDER: The appeal is dismissed.