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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3042  
Washington, DC 20529



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

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FILE: [REDACTED]  
[EAC 04 065 50092]

Office: VERMONT SERVICE CENTER

Date: **AUG 15 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:  
[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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**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 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 had failed to establish that she was eligible for late registration.

On appeal, counsel 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 alien 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 § 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 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 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 shows that the applicant filed her TPS application on December 29, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period from January 5, 1999 through August 20, 1999, she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

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).

In a notice of intent to deny dated February 11, 2004, 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), and evidence that she had continuously resided in the United States since December 30, 1998, and had been continuously physically present from January 5, 1999, to the date of filing her application. The director noted that in response, the applicant provided evidence of her residence and physical presence in the United States, and that although the applicant insisted that she had an application for adjustment of status pending during the initial registration period, and that the adjustment application was still pending, no documentation was provided to substantiate this claim.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on March 22, 2004.

On appeal, counsel asserts that the applicant is eligible for late registration for TPS as she is an applicant for adjustment of status. He submits a copy of Form I-797, Notice of Action, dated April 11, 1997, regarding a Form I-130, Petition for Alien Relative, filed on the applicant's behalf by her alleged United States citizen spouse,

The Form I-797 advised Mr. [REDACTED] that his birth certificate did not bear his first name. He was also requested to submit evidence that he is/was a citizen of the United States. Counsel also submits a copy of a CIS computer printout indicating that the Form I-130 was approved on October 15, 1997, and a copy of a Certificate of Marriage indicating that the applicant and [REDACTED] were married in New York on May 14, 1996.

Counsel also submits a statement indicating that the applicant qualifies as a late registrant because she "was the beneficiary of a family petition filed on her behalf by her United States Citizen husband, and as applicant of an application to adjust status as a legal permanent resident. This application is still current, although the qualifying relationship is becoming dissolute."

The record, however, does not contain evidence that the applicant filed an application for adjustment of status to permanent residence (Form I-485) based on the approved Form I-130. The approved Form I-130, alone, does not convey eligibility for late registration for TPS.

It is further noted that the applicant filed an initial TPS application on June 26, 2002. On Part 3 of the Form I-821 (Information about your spouse and children), the applicant wrote "N/A" as an indication that she was not married and had no children. In a notice of intent to deny dated July 10, 2002, the applicant was requested to submit evidence establishing her eligibility for filing after the initial registration period from January 5, 1999 to August 20, 1999. Because the applicant, in response, failed to submit any evidence to establish her eligibility for late registration, the director denied the application on August 16, 2002. The applicant did not appeal the director's decision.

The applicant has failed to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for temporary protected status 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.