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U.S. Citizenship  
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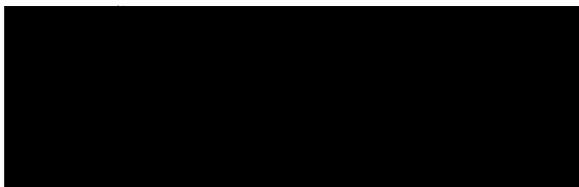
Office: VERMONT SERVICE CENTER

Date: AUG 22 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:



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.

  
for 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 (AAO) on appeal. The appeal will be dismissed.

The applicant is a 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.

On appeal, the applicant provides a brief statement and one additional document.

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.

The issue raised by the director to be addressed in this proceeding is whether the applicant meets the eligibility requirements for late registration.

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.

As stated in 8 C.F.R. § 244.1. "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant did file an initial application for TPS during the initial registration period. The director denied that application on August 30, 2000, for abandonment. The director advised the applicant that a denial due to abandonment may not be appealed. The director also advised that the applicant could file a motion to reopen a petition or application denied due to abandonment with evidence that the decision was in error because:

1. The requested evidence was not material to the issue of eligibility;
2. The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or
3. The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.

The applicant was given until October 2, 2000 to file a motion. The applicant filed a motion to reopen or reconsider on September 19, 2000.

The director, in a letter dated February 22, 2001, in reference to the applicant's motion to reopen, requested that the applicant submit evidence to show that she has resided in the United States since December 30, 1998, and that she has been physically present in the United States since January 5, 1999. The director gave the applicant 60 days to respond.

The director determined that the applicant, after being given several opportunities, failed to submit evidence to establish that she has been continuously physically present in the United States since January 5, 1999, and that she has been continuously residing in the United States since December 30, 1998. Consequently, the director denied the application on June 4, 2001.

A subsequent appeal was filed by the applicant on July 9, 2001, and was summarily dismissed by the AAO on February 15, 2002, because the applicant failed to submit any evidence to overcome the findings of the director.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on February 19, 2002. The director denied this second application because it was filed outside of the initial registration period, and the applicant had failed to establish her eligibility for filing under the provisions of late registration.

The applicant filed an appeal on May 22, 2003. On appeal, the applicant states that she is providing a "copy of the INS envelope with the seal on 1999 as prove [sic] that I filed the form I-821/I-765 at the first registration time."

For clarification purposes, the applicant's initial Form I-821 was properly filed. That initial application was denied by the director on June 4, 2001. The director's decision to deny the application was affirmed by the AAO on appeal. Any Form I-821 application subsequently submitted by the same applicant after an initial application

is filed and a decision rendered must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed a subsequent Form I-821 on February 19, 2002. Since the initial application was denied on June 4, 2001, the subsequent application cannot be considered as re-registration. Therefore, this application can only be considered as late registration.

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 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 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).

The record of proceedings confirms that the applicant re-filed her TPS application after the initial registration period had closed.

In a denial notice dated April 24, 2003, the director found that the applicant failed to establish that she was eligible "to take advantage of the late registration provisions of the Temporary Protected Status regulation."

On appeal, as previously mentioned, the applicant states that she filed her TPS application in 1999 during the initial registration period. The applicant submits a copy of an Immigration and Naturalization Service envelope with an illegible postmarked date and no indication that it had been addressed to the applicant.

No documentary evidence has been presented on appeal to establish the applicant's eligibility for late registration. The envelope submitted on appeal does not address the issue at hand and is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Consequently, the applicant has not established that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). The director's decision to deny the application for temporary protected status will be affirmed. It is noted that the applicant filed a third I-821, Application for Temporary Protected Status, on September 23, 2003, which was denied by the director on March 9, 2004.

Beyond the decision of the director the applicant has not provided sufficient credible evidence to establish her continuous physical presence in the United States since January 5, 1999, and her continuous residence in the United States since December 30, 1998. Therefore, the application must also be denied for these reasons.

An alien applying for TPS 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.