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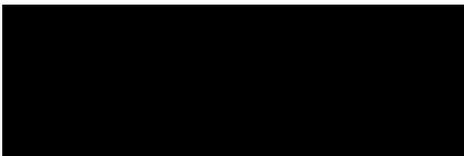
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



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

**PUBLIC COPY**

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FILE:



Office: TEXAS SERVICE CENTER

Date:

**MAY 24 2005**

[SRC 03 170 53089]

IN RE:

Applicant:



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 M. Gomez for*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. 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 that she was eligible for late registration.

On appeal, the applicant submits a statement.

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. Extensions of the TPS designation for Honduras 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 Citizenship and Immigration Services (CIS), on June 2, 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).

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. 8 C.F.R. § 244.2(g).

On July 26, 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 was also requested to submit evidence establishing her continuous residence and continuous physical presence in the United States during the requisite periods. In addition, the applicant was requested to submit photo identification or a national identity document bearing a photograph and/or fingerprint, along with a copy of her birth certificate, with English translation. The applicant, in response, provided photocopies of the following documentation: the biographic page of her Honduran passport issued on June 27, 2000, by the Consulate General, Miami, Florida; Gigante Express receipts dated March 21, 1999, and March 10, 1999; her Honduran birth certificate, with English translation; and, an unsigned letter to the Director, CIS, regarding the extension of the designation of Honduras as a country to receive TPS benefits, with a signed waiver dated August 8, 2003, authorizing release of information pertaining to her TPS application to the Honduran Embassy. In her accompanying statement, the applicant stated she could not send more evidence because she did not have any additional evidence.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on September 1, 2003.

On appeal, the applicant states that she does not have additional evidence because for the timeframe requested, she did not have identification or permission to work, and could not obtain further documentation. She asks for clemency and that her case be considered on a humanitarian basis. The applicant does not submit any additional documentation in support of the appeal.

The applicant previously submitted evidence in an attempt to establish her qualifying continuous residence and continuous 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. It is noted that with her initial TPS application, the applicant submitted a copy of a Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals (BIA) of Decision of District Director, dated June 5, 1999, with a partial money order receipt dated June 4, 1999. This document bears the applicant's name and the record number

A review of this second A-file reveals that the applicant was apprehended by the United States Border Patrol while attempting entry into the United States on or about March 2, 1999, at or near Brownsville, Texas. The record reflects that the hearing venue was changed from Harlingen, Texas, to Miami, Florida, on June 10, 1999. The record contains the decision of the Immigration Judge, Miami, Florida, dated September 10, 1999, ordering the applicant's removal to Honduras following her failure to appear for a hearing on that date.

It also is noted that the record contains the original Form EOIR-29, bearing the fee stamp "6/15/99," and notation "Motion to Reopen." On the EOIR-29, the applicant indicated that she was appealing the decision dated May 19, 1999, at Harlingen, Texas. She indicated that a separate written brief or statement was being attached. In the statement, the applicant asks the Immigration Judge to forgive her for being in the United States without authorization. She states that her family lost all their belongings in the hurricane and that she was concerned for the safety of her children in the shelters in Honduras. The filing of the EOIR-29 appeal form followed the action of changing venue from Texas to Miami, Florida, a motion on the applicant's behalf to facilitate her attendance at hearings in the area where the applicant resided. It is not clear from the

record whether the applicant's submission was considered in the final determination by the Immigration Judge. Nevertheless, the applicant could have reiterated her statements during her removal hearing. She, however, did not appear for the hearing. The record does not reflect that the applicant filed an appeal to the September 10, 1999, decision of the Immigration Judge ordering her removal to Honduras.

Therefore, during a portion of the initial registration period for Hondurans that ran from January 5, 1999, through August 20, 1999, the applicant was under immigration proceedings, and filed an appeal to the BIA on an action that was favorable to her. However, in September 1999, the Immigration Judge, Miami, Florida, issued a final order of removal that the applicant did not appeal. The applicant has not submitted any 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 decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish her continuous residence in the United States since December 30, 1998, and her continuous physical presence since January 5, 1999. The record reflects that the applicant entered the United States on or about March 2, 1999. Therefore, the applicant has not established that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c), and the application must also be denied for these reasons.

It is noted that under [REDACTED] the record contains a Warrant of Removal issued at Miami, Florida, on October 26, 2000, based upon the final order of removal by the Immigration Judge.

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.