

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



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

PUBLIC COPY

M1

[REDACTED]

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: MAR 26 2007
[WAC 05 285 70188]

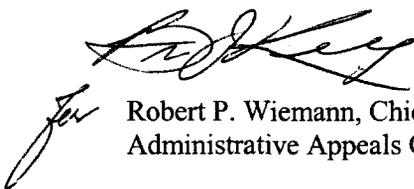
IN RE: Applicant: [REDACTED]

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, Chief
Administrative Appeals Office

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 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 submit evidence 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, 2007, 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 indicates that the applicant filed her initial TPS application on July 12, 2005.

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 15, 2006, 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 to establish continuous residence in the United States since December 30, 1998, and continuous physical presence from January 5, 1999, to the date of filing the application. The director noted that the applicant, in response, furnished evidence to establish continuous residence and continuous physical presence; however, she failed to submit evidence to establish eligibility for late initial registration. Therefore, the director denied the application on April 26, 2006.

On appeal, counsel asserts that the applicant is eligible to file a late registration because at the time of the initial registration period, since prior to 1998 to the present, she has a pending asylum case. Counsel submits copies of six Employment Authorization Cards (EADs) issued under Category C08 on February 24, 1994; April 21, 1999; August 5, 2000; November 6, 2001; September 13, 2003; and August 29, 2004.

A review of the record of proceeding indicates that on August 28, 1983, the applicant was apprehended by the United States Border Patrol while attempting to enter the United States without inspection near Tecate, California. Form I-221S (Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien) was issued on August 30, 1983, in San Diego, California. In removal proceedings held on June 20, 1986, the applicant failed to appear; therefore, the Immigration Judge ordered that the case be administratively closed without prejudice until such time as the applicant is located and the matter recalendared for further proceedings.

On January 18, 1994, the applicant filed Form I-589, Request for Asylum in the United States. The record indicates that on February 15, 1994, the applicant was sent a notice advising her that the Asylum Office, Los Angeles, California, did not have jurisdiction over her asylum application because the applicant was under deportation or exclusion proceedings, and that she may file her asylum request with the Office of Immigration Judge having jurisdiction over her place of residence. She was further advised that all processing of the asylum application filed in the Asylum Office had, therefore, been terminated.

Despite counsel's assertion, the record, in this case, indicates that the applicant's asylum application was terminated on February 19, 1994; therefore, the asylum application was not pending on the date she filed her TPS application on July 12, 2005. The fact that the applicant was erroneously issued EADs is not evidence that the applicant's asylum case is pending. In *Sussex Engineering, Ltd. v. Montgomery*, 825 F.2d 1084 (6th Cir. 1987), the Court of Appeals held that it is absurd to suggest that the Service [CIS] must treat acknowledged errors as binding precedent. The Service [CIS] is not required to approve applications or petitions where eligibility has not been demonstrated. See *Matter of M-*, 4 I&N Dec. 532 (A.G. 1952; BIA 1952). In this case, the applicant has not demonstrated that she is eligible for TPS.

Accordingly, the applicant is ineligible for TPS because she 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 TPS application 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.