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FILE: [REDACTED] OFFICE: California Service Center DATE: **MAR 29 2007**
[WAC 05 097 70930]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. It is now on appeal before the Administrative Appeals Office (AAO). 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 on the grounds that the record failed to establish that the applicant was continuously resident and physically present in the United States for the required periods of time, and that she was eligible for late registration.

On appeal, the applicant submits some additional documentation and asserts that the record establishes her continuous residence and physical presence in the United States from the dates applicable for Honduran nationals, as well as her eligibility for late TPS registration.

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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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.

Honduran nationals applying for TPS must demonstrate continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999. 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 December 30, 2004.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she satisfied at least one of the criteria enumerated in 8 C.F.R. § 244.2(f)(2) 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 CIS. See 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. See 8 C.F.R. § 244.9(b).

On March 29, 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), as well as documentary evidence of her continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States since January 5, 1999. In response the applicant, who the record indicates first entered the United States without inspection on November 5, 1998, submitted photocopies of her marriage certificate showing that she was married in New York City on February 13, 2004; birth certificates for two children born in Elmhurst, New York in April 2001 and September 2004; her Honduran passport, issued in 2005; and her federal income tax return for 2004.

On June 1, 2006, the director denied the application, stating that the evidence submitted by the applicant was insufficient to establish that she met the continuous residence and continuous physical presence requirements for TPS applicants from Honduras and that she was eligible for late registration.

On appeal the applicant asserts that she qualifies for late registration under 8 C.F.R. § 244.2(f)(2)(ii) because of an Immigration Judge's decision to grant the applicant relief from removal on April 20, 1999. The record shows that the applicant had entered the United States without inspection on November 5, 1998, was apprehended, and was immediately placed into removal proceedings. At a hearing on April 20, 1999, the Immigration Judge issued an order which reads as follows: "It is HEREBY ORDERED that the case be administratively closed and be considered no longer pending before the Immigration Judge for the following reason: Respondent is eligible for TPS." The judge's decision on April 20, 1999, did not grant the applicant relief from all removal proceedings in the future. It simply closed the proceedings then pending and noted that the applicant was eligible for TPS, by which she may have been granted relief from removal. But the applicant failed to file an application for TPS by August 20, 1999, when the initial registration period for Honduran nationals expired. The applicant asserts that she has an outstanding application for voluntary departure that is subject to further review once TPS for Hondurans expires, but there is no evidence of any such application in the record. Based on the foregoing analysis, the AAO determines that the applicant has failed to establish that she qualifies for late registration under 8 C.F.R. § 244.2(f)(2)(ii), or under any other criteria enumerated in 8 C.F.R. § 244.2(f)(2).

On appeal the applicant reiterates her contention that she has maintained continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999, and submits some additional documentation including an affidavit from a neighbor, dated June 23, 2006, and some documents attesting to the applicant's presence in the country during late 1998 and 1999. The affidavit from the neighbor states that he and his wife have known the applicant since her arrival in New York on December 7, 1998, that they gave the applicant room and board, and that, as far as he knew, the applicant has maintained a steady job. The affiant provides no further details about the applicant's life in the United States since December 1998, and does not claim to know whether she has been continuously resident and physically present in the United States since that time. Furthermore, affidavits from acquaintances are not, by themselves, persuasive evidence of residence or physical presence in the United States. The other documentation submitted on appeal all relates to 1998 and 1999. Previously submitted documentation includes one document from 2001 and several from 2004 and 2005. The AAO determines that the evidence of record does not meet the evidentiary standard set forth in 8 C.F.R. § 244.9(a)(2) to establish the applicant's continuous residence in the United States since December 30, 1998, and continuous physical presence in the country since January 5, 1999.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. The director's decision to deny the application for TPS will be affirmed.

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.