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FILE: [REDACTED]  
[EAC 03 240 50510]

OFFICE: VERMONT SERVICE CENTER

Date: **NOV 16 2007**

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.

Robert P. Wiemann, Chief  
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 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. The director also found that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, counsel states that the applicant is eligible for TPS.

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.

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 January 5, 2009, upon the applicant's re-registration during the requisite period.

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed her application with Citizenship and Immigration Services (CIS) on August 21, 2003.

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).

The first issue in this proceeding is whether the applicant is eligible for late registration.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

On October 29, 2003, the director sent a Notice of Intent to Deny to the applicant requesting that she submit evidence to establish her eligibility for late registration. In response to the director's request, counsel stated that the applicant initially filed a TPS application with Immigration and Naturalization Services (INS) on April 29, 1999, and that she has been in the United States since October 29, 1997. The applicant submitted a copy of her B1/B2 Visa, a copy of a Form I-821, Application for Temporary Protective Status, and copies of a Western Union money order and receipt dated April 27, 1999.

The director determined that the applicant had failed to establish that she was eligible for late registration and denied the application on June 4, 2004.

On appeal, counsel states that the applicant is eligible for late registration, and that the applicant filed a TPS application on April 29, 1999. The applicant resubmits evidence submitted in response to the director's request for evidence, on appeal.

Contrary to counsel's assertions, there is no evidence contained in the record of proceedings that shows the applicant filed a TPS application in April of 1999. There is no Notice of Receipt or stamp-dated Form I-821 contained in the record that would substantiate counsel's claim. The copies of the Western Union money order and receipt are not signed, and there is nothing to demonstrate that the money order was received or processed by INS. The record shows that the applicant was issued a B1/B2 visitor's visa on October 9, 1997. Although the counsel claims that the applicant has been present in the United States since October 9, 1997, the record of proceedings shows that she was admitted into the United States using that visa, as a member of the "Heart to Honduras Choir," and that she re-entered Honduras on November 30, 1997. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the inconsistency.

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). Consequently, the director's conclusion that the applicant had failed to establish her eligibility for late registration will be affirmed.

The second issue in this proceeding is whether the applicant has established her continuous residence in the United States since December 30, 1998, and her continuous physical presence in the United States since January 5, 1999.

As stated above, the applicant was requested on October 29, 2003, to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the following documentation:

1. A copy of Health Services cash receipt dated October 2, 2000, and bearing the applicant's name;

2. A copy of a notice of enrollment from CAMBA dated August 28, 2000, and bearing the applicant's name as student;
3. A copy of a postmarked envelope dated 1999 and bearing the applicant's name;
4. A copy of the applicant's Honduran passport issued to her on September 24, 1997; and,
5. A copy of the applicant's B1/B2 visitor's visa with a stamped exit date from Honduras of October 29, 1997, and a stamped entry date into Honduras of November 30, 1997.

The director concluded that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods and denied the application on June 4, 2004.

On appeal, counsel states that the applicant has been present in the United States since October 29, 1997; and therefore, she is eligible for TPS. The applicant submitted the following documentation on appeal:

6. A copy of a medical receipt from the Suffolk County Department of Health Service dated December 26, 2001, and bearing the applicant's name as patient;
7. A copy of a New York States birth certificate that indicates the applicant is the mother of a child born in that state on July 27, 2002; and,
8. Copies of a consultation request and consultant's report from Nassau University Medical Center dated June and July of 2002, and bearing the applicant's name as patient.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999. The copies of the applicant's Honduran passport and B1/B2 Visa were issued to her in Honduras. All other evidence submitted by the applicant is dated subsequent to the requisite time periods; and therefore, is insufficient to establish the applicant's eligibility for TPS.

The applicant has failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will also 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. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

**ORDER:** The appeal is dismissed.