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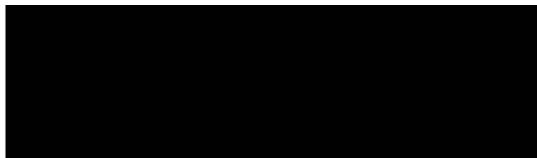
u.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



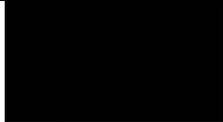
**U.S. Citizenship
and Immigration
Services**

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

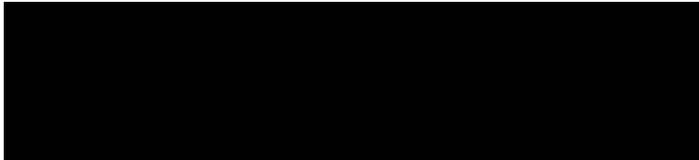
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INRE:

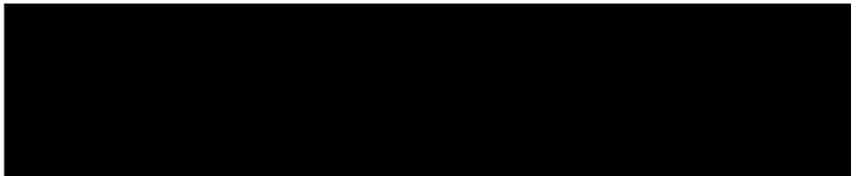
Applicant:



APPLICATION:

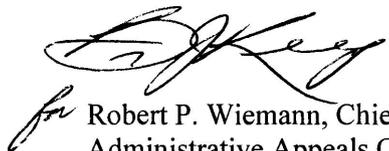
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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, 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 record indicates that the applicant filed an initial TPS application on June 23, 2003, under Citizenship and Immigration Services (CIS) receipt number EAC 03 205 51359. The Director, Vermont Service Center (VSC), denied that application on February 18, 2004, because the applicant had failed to establish that she was eligible for late registration. On March 25, 2004, the applicant filed an appeal from the denial decision. The VSC director rejected that appeal on November 21, 2005, because it was untimely filed, and did not meet the requirements of a motion to reopen or reconsider pursuant to 8 C.F.R. § 103.5(a)(2) and (3). The director noted that the applicant also had not shown that she was eligible for late initial registration for TPS.

The applicant filed the current Form 1-821, Application for Temporary Protected Status, on December 8, 2004, and indicated that she was re-registering for TPS. The Director, California Service Center, denied the re-registration application on August 23, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

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 section § 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (t)
 - (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 used in 8 C.F.R. § 244.1 means residing in the United States for the entire period specified in the regulations and since December 30, 1998. 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 used in 8 C.F.R. § 244.1 means actual physical presence in the United States for the entire period specified in the regulations and since January 5, 1999. 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 initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. 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 appeal, counsel asserts that the applicant is eligible for TPS because she has been residing in the United States since February 1992, and her spouse, [REDACTED] *TPS*. Counsel submits a copy of a marriage certificate indicating that the applicant and [REDACTED] were married in Bronx, New York, on March 18, 2004. He also submits a copy of [REDACTED] Employment Authorization Card issued on July 25, 2005, under category A12.

While the regulations may allow spouses of aliens who are TPS-eligible to file their applications after the initial registration period had closed, the applicant, in this case, was not married to [REDACTED] during the initial registration period as required by 8 C.F.R. § 244.2(f)(2). It is also noted that on October 23, 1996, a Form I-130, Petition for Alien Relative, was filed on the applicant's behalf by her [former] United States citizen spouse. A Form I-485, Application to Register Permanent Residence or Adjust Status, was simultaneously filed on October 23, 1996. On February 10, 1998, prior to the TPS initial registration period for Hondurans, the New York district director denied the I-130 petition and the I-485 adjustment application. Accordingly, the applicant has failed to establish that she has met the requirements of 8 C.F.R. § 244.2(f)(2)(iv), or any of the other criteria for late registration described in 8 C.F.R. § 244.2(f)(2).

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.

In this case, the applicant has not previously been granted TPS. Therefore, she is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

Beyond the decision of the director, it is also noted that the record of proceeding contains Form 1-213, Record of Deportable/Inadmissible Alien, indicating that on March 9, 2003, the applicant, accompanied by her daughter (file number [REDACTED]) were apprehended by United States Border Patrol Agents while attempting to enter into the United States without inspection near the Eagle Pass, Texas, Port of Entry. The applicant stated at that time that they left Honduras and traveled through Guatemala and Mexico by bus for several days, arriving in Piedras Negras, Coahuila on March 8, 2003, from where they made their illegal entry into the United States on March 9, 2003. Based on the applicant's illegal entry into the United States on March 9, 2003, the applicant could not have maintained continuous residence and continuous physical presence in the United States during the entire period specified in the regulations. 8 C.F.R. § 244.1. Accordingly, the applicant has failed to establish that she has met the criterion for continuous residence since December 30, 1998, and continuous physical presence since January 5, 1999, as described in 8 C.F.R. § 244.2(b) and (c). Therefore, the application will also be denied for this reason.

Also, it is noted that the applicant was ordered removed from the United States, *in absentia*, to Honduras, by an Immigration Judge at San Antonio, on June 5, 2003. The record of proceedings also contains a Warrant of Removal/Deportation dated June 13, 2003.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.