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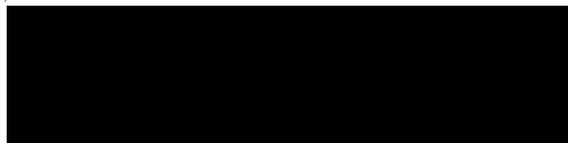


FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: DEC 13 2007  
[EAC 07 020 70306]

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 had failed to: (1) establish that she was eligible for late registration; (2) submit evidence of her identity; and (3) had continuously resided in the United States since December 30, 1998, and had been continuously physically present from January 5, 1999, to the date of filing the application.

On appeal, counsel submits a statement.

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 January 5, 2009, 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 shows that the applicant filed her TPS application on October 11, 2006. 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.

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 (NOID) dated December 8, 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 that she had continuously resided in the United States since December 30, 1998, and had been continuously physically present from January 5, 1999, to the date of filing the application. In response, counsel asserts that the applicant is eligible for late registration because she is the spouse of an alien who was granted TPS. He submits a copy of a marriage certificate indicating that the applicant and [REDACTED] were married in Honduras on February 9, 1989, and copies of Employment Authorization Cards issued to Mr. [REDACTED] under category [REDACTED]. Counsel also submits evidence in an attempt to establish the applicant's continuous residence and continuous physical presence in the United States during the requisite period.

The director reviewed the evidence submitted in response to the NOID and noted that the applicant provided numerous receipts for the years 2000 through 2006; however, the receipts for 1999 did not contain the applicant's name. The director further noted that the applicant indicated on her TPS application (Form I-821) that her date of entry into the United States was April 1999. The director, therefore, denied the application on February 1, 2007, after concluding that the applicant had failed to establish that she was eligible for late

registration, that that she had continuously resided in the United States since December 30, 1998, and that she had been continuously physically present from January 5, 1999, to the date of filing the application.

██████████, ██████████ counsel, on appeal, asserts that the applicant is eligible for TPS because her spouse is a national of Honduras and has been granted TPS. He states that in ██████████ the Immigration Judge granted the respondent TPS as a derivative applicant who was not a national of a designated foreign state [██████████ was a Mexican national and spouse of a Honduran national]. The Board of Immigration Appeals (BIA) disagreed with the Government's interpretation of the relevant regulation holding that section 244.2 unequivocally states that TPS may be granted to an applicant who establishes that she is the spouse of an alien currently eligible to be a TPS registrant even if her nationality is different from that of her spouse. Counsel asserts that the applicant, therefore, is eligible for TPS because there is no dispute that her spouse was a national of Honduras or an eligible alien for TPS registration. Similarly, counsel asserts the applicant's husband has satisfied TPS requirements as he arrived in the United States in 1998, and he has been granted TPS.

██████████, however, was granted TPS as a derivative of her Honduran national spouse although she is a national of Mexico. In the applicant's case, it is not disputed that the applicant is the spouse of a Honduran national who was married prior to the initial registration period for Hondurans (from January 5, 1999 through August 20, 1999). The issue in this proceeding is that the applicant was not present in the United States during the period required to establish eligibility (continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999). Furthermore, there is no indication that *Reyes* has been declared a precedent decision and, therefore, is not binding on the AAO. Moreover, the AAO does not agree with the findings of ██████████ in that the statute clearly states that aliens must be "nationals of designated foreign states." Section 244(c) of the Act. The regulations were amended to allow individuals who may have been in one of the categories under 8 C.F.R. § 244.2(f)(2) to file for late initial registration if and only if they also meet the criteria of § 244.2(a) through (e) above.

The applicant was not present in the United States during the period required to establish eligibility. While the applicant did satisfy the requirements for late registration as set forth in 8 C.F.R. § 244.2(f)(2)(iv), the applicant remains ineligible for TPS because she could not have met the criteria for continuous residence in the United States since December 30, 1998, and continuous physical presence since January 5, 1999, as described in 8 C.F.R. § 244.2(b) and (c), based on her entry into the United States after the requisite period required to establish eligibility for TPS. Consequently, the director's decision to deny the TPS application on these grounds will also be affirmed.

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.