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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: JUL 30 2007
[EAC 06 167 52580, appeal]

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

for 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 on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Liberia 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 establish that he was eligible for late registration.

On appeal, counsel submits a statement. While counsel indicates that he needs 45 days to submit a brief and/or evidence, to date, no additional statement or evidence has been provided. Therefore, the record shall be considered complete.

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 parole; 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.

On August 25, 2004, the Secretary of the Department of Homeland Security announced the termination of prior designations and the re-designation of TPS for nationals of Liberia (or aliens having no nationality who last habitually resided in Liberia). This re-designation allowed nationals of Liberia who have continuously resided in the United States since October 1, 2002, and who have been continuously physically present since August 25, 2004, to apply for TPS. The initial registration period for this new re-designation began on August 25, 2004, and ended on February 21, 2005. The re-designation of Liberia's TPS eligibility became effective on October 1, 2004, and subsequent extensions of the TPS designation have been granted until October 1, 2007.

The record shows that the applicant filed his initial TPS application on October 14, 2005, after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period he 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 January 11, 2006, the applicant was requested to submit evidence establishing his 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 October 1, 2002, and continuous physical presence from August 25, 2004, to the date of filing the application. The director determined that the applicant had failed to establish that he was eligible for late initial registration and denied the application on April 7, 2006.

On appeal, counsel asserts that the applicant submitted a volume of evidence to establish eligibility, but the director, in his decision, did not address any of the evidence submitted by the applicant in response to the NOID.

A review of the record indicates that in response to the director's NOID, counsel furnished evidence to establish the applicant's residence and physical presence during the qualifying period, and asserts that the applicant has been both physically present and continuously resided in the United States since his initial date of admission on July 20, 1999. He further asserts that the applicant is eligible for late initial registration because during the first period of TPS designation for Liberians on October 1, 2002, the applicant was in DED status [Deferred Enforced Departure]; however, all documentation relating to his DED status was in his wallet which was stolen from him in late 2001. He submits a police report to support his claim that the applicant's wallet was stolen on January 27, 2002.

The record further indicates that on December 20, 1999, the applicant was granted DED and was issued an Employment Authorization Card (EAD) until September 29, 2000, with subsequent extension until September 29, 2001. The DED designation for Liberians, however, expired on September 29, 2002, prior to the earlier TPS designation for Liberians (October 1, 2002) and also prior to the present TPS re-designation for Liberians effective on October 1, 2004.

Counsel submits a copy of Form I-797C (Notice of Action) rejection notice, dated July 23, 2004, advising the applicant that Form I-765, Application for Employment Authorization Document, received on July 17, 2004, was being returned to the applicant based on an incorrect filing fee, and because the application had not been fully completed. The record indicates that Form I-821, Application for Temporary Protected Status, also was returned to the applicant with the Form I-765. There is no evidence in the record that the applicant subsequently returned both forms to USCIS. It should be noted at this point that the Forms I-765 and I-821 were submitted on July 17, 2004, during the October 1, 2002 designation period but after the initial registration period of that earlier designation, and prior to the re-designation of October 1, 2004.

There is no evidence in the record that the applicant had filed an application for TPS during the October 1, 2002 TPS designation for Liberians; however, that designation terminated on October 1, 2004. That earlier 2002 TPS designation is unrelated to the [present] 2004 TPS re-designation.

The applicant, in this case, filed his initial TPS application on October 14, 2005. The applicant has failed to establish that he 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 application for temporary protected status will be affirmed.

The Federal Bureau of Investigation fingerprint results report indicates that the applicant was arrested on December 31, 2002, in Mecklenburg, North Carolina, for "assault on a female." The applicant submitted the records of the General Court of Justice, State of North Carolina, Mecklenburg County, indicating that this case was dismissed by the District Attorney on February 28, 2003. The court records also indicate that the applicant was convicted on September 18, 2002, of (1) expired/no inspection sticker, and (2) no registration card, both violations. The applicant, therefore, is not ineligible for TPS, pursuant to pursuant to section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a), based on these arrests and/or convictions.

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.