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

MI

[REDACTED]

FILE:

[REDACTED]

OFFICE: Vermont Service Center

DATE: OCT 02 2007

[REDACTED]
consolidated herein]
[EAC 06 004 70721]

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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. 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 (VSC). It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained, and the application approved.

The applicant is a national 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 VSC Director denied the application on the grounds that the applicant failed to establish that he was eligible for late TPS registration and that he met the continuous physical presence and continuous residence requirements for TPS applicants from Liberia.

On appeal counsel asserts that she had attempted to file the TPS application multiple times during the initial registration period, but that it was returned each time for various reasons. Counsel requests that the application be accepted as timely filed and that it be reconsidered on the merits.

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.

Liberia was designated for TPS on October 1, 2002 (after a previous TPS designation had terminated in 1999). The initial registration period was October 2, 2002 – April 1, 2003. On August 25, 2004, the Department of Homeland Security (DHS) re-designated Liberia for TPS and specified that TPS was available to Liberians who had been continuously physically present in the United States since August 25, 2004, and continuously resident in the United States since October 1, 2002. The initial registration period pursuant to the re-designation was August 25, 2004 – February 21, 2005. The TPS designation has been twice extended, and will terminate for Liberia on October 1, 2007.

The documentation of record shows that the applicant entered the United States as a nonimmigrant visitor (B-2) on September 27, 2000, with authorization to remain in that status until March 26, 2001. On June 26, 2001, he filed a Form I-589, Application for Asylum and Withholding of Deportation, which was referred to an Immigration Judge on October 9, 2001, and remains pending.

The applicant filed his initial Form I-821, Application for Temporary Protected Status, at the New York District Office on March 21, 2003. It was approved on June 20, 2003. After the re-designation of Liberia for TPS in August 2004, the applicant filed his next TPS application at the VSC on October 4, 2005, which was after the expiration of the initial registration period in February 2005. On March 15, 2006, after counsel responded to a request for evidence by a letter without additional documentation, the VSC Director denied the application on the grounds that the applicant failed to establish (1) that he was eligible for late TPS registration under the provisions of 8 C.F.R. § 244.2(f)(2) and (g); (2) that he had been continuously physically present in the United States from August 25, 2004, to the date of filing for TPS (October 4, 2005), in accordance with section 244(c)(1)(A)(i) of the Act; and (3) that he had continuously resided in the United States since October 1, 2002, in accordance with section 244(c)(1)(A)(ii) of the Act.

On appeal counsel states that she attempted to file a TPS application three times on behalf of the applicant in January and February 2005, prior to the close of the initial registration period, twice with the New York District Office and once with the Chicago Office, but each time had the application rejected for various reasons. The application was rejected yet again by the Chicago office in September 2005, counsel indicates, before it was finally successfully filed at the VSC on October 4, 2005. The record supports counsel's rendition of events, insofar as the attempted filings and rejections by the New York and Chicago offices are concerned, though the reasons claimed by counsel on appeal differ somewhat from those cited in the rejection notices of the New York and Chicago offices. Regardless of the reasons for the rejections of the TPS application that preceded the filing in October 2005, the applicant is eligible for late TPS registration under § 244.2(f)(2)(ii) because he had an asylum

application pending during the initial application period from August 2004 to February 2005, and it was still pending at the time his TPS application was filed in October 2005. Upon review of the record, the AAO determines that the documentation submitted by the applicant establishes his continuous physical presence in the United States from August 25, 2004, to the date of TPS filing on October 4, 2005, and his continuous residence in the United States since October 1, 2002, as required for TPS applicants from Liberia pursuant to section 244(c)(1)(A)(i) and (ii) of the Act and 8 C.F.R. § 244.2(b) and (c). Thus, the grounds for the denial of the application by the VSC Director have been overcome. The appeal will be sustained, and the application approved.

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 met that burden.

ORDER: The appeal is sustained. The application is approved.