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

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FILE:

[EAC 07 012 73858]

OFFICE: Vermont Service Center

DATE: SEP 17 2007

IN RE:

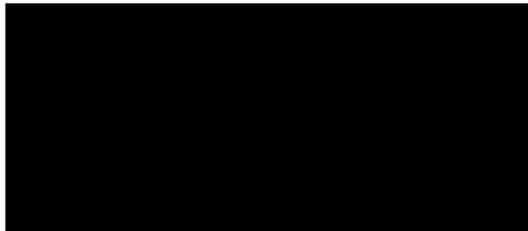
Applicant:



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 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 dismissed.

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 ground that it was not timely filed.

On appeal counsel asserts that the applicant is eligible for late registration because he had a previous TPS application pending until July 28, 2006, and filed his current application before the termination period for Liberian TPS commenced on September 20, 2006.

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 terminated in 1999). The initial registration period was October 2, 2002 – April 1, 2003. On August 25, 2004, the Department of Homeland Security (DHS) terminated the existing TPS designation for Liberia and re-designated the country for TPS until October 1, 2005. The initial registration period pursuant to the re-designation was August 25, 2004 – February 21, 2005. On August 16, 2005, the TPS designation was extended to October 1, 2006. The initial registration period for the extension was August 16, 2005 – October 17, 2005. On September 20, 2006, DHS announced the termination of TPS for Liberia, effective October 1, 2007. Extensions of TPS until that date were restricted to aliens who were already TPS registrants or had previously filed applications pending. The registration period for these final extensions was September 20, 2006 – November 20, 2006.

The documentation of record shows that the applicant – who first entered the United States as a nonimmigrant visitor (B-1) in 1984 – filed his initial Form I-821, Application for Temporary Protected Status, on July 27, 2004, at the District Office in Baltimore, Maryland [BAL 04 202 50002]. On October 7, 2004, the District Director denied the application, in accordance with section 244(c)(2)(B)(i) of the Act, on the ground that the applicant had been convicted of a felony or two or more misdemeanors committed in the United States. The applicant appealed and the AAO, in a decision dated July 28, 2006, upheld the District Director's denial of the application, albeit on different grounds. The AAO determined that the District Director's decision was erroneous insofar as the applicant had submitted evidence that the criminal charges against him had been dismissed, but found that the applicant's filing for TPS on July 27, 2004, was long after the closing date (April 1, 2003) of the initial registration period under the then current TPS designation for Liberia dating from October 1, 2002, and that the applicant failed to establish that he was eligible for late registration under any of the criteria enumerated at 8 C.F.R. § 244.2(f)(2). Accordingly, the AAO dismissed the appeal.

On September 20, 2006, the applicant filed the current Form I-821, which he identified as an application for re-registration or renewal of TPS, at the Vermont Service Center [EAC 07 012 73858]. The application was denied by the VSC Director on November 21, 2006, on the ground that it was not timely filed. The director noted that the re-designation of Liberia for TPS dated from August 25, 2004, with an initial registration period of August 25, 2004 – February 21, 2005; that the TPS designation for Liberia was extended for a year on August 16, 2005, with an initial registration period of August 16 – October 17, 2005; and that the applicant had not filed for TPS during either of the foregoing registration periods. The director also noted that during the termination period for Liberian TPS – beginning on September 20, 2006, and ending on October 1, 2007 – late initial filings are not allowed. Since the applicant's Form I-821 was filed on September 20, 2006, the director denied the application.

On appeal counsel asserts that the applicant is eligible for late TPS registration because his previous TPS application was pending until July 28, 2006, and his current application was filed before the termination period began since it was delivered to the VSC on August 19, 2006, and should be considered as filed on that date – not

September 20, 2006, as stated by the director. The AAO does not agree with counsel's arguments. The fact that the applicant had a previous TPS application pending until July 28, 2006, is irrelevant because that is not a type of application that would make the applicant eligible for late TPS registration under 8 C.F.R. § 244.2(f)(2). The pertinent regulations specify that the applicant must have "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" [8 C.F.R. § 244.2(f)(2)(ii)], or "a pending request for reparole" [8 C.F.R. § 244.2(f)(2)(iii)] during the initial registration period to be eligible for late TPS registration. A prior TPS application does not qualify under either of these criteria. As for counsel's argument that the current application was filed in August 2006, not September 20, 2006, the crucial fact with regard to the applicant's eligibility for TPS is that it was not filed during the initial registration period that closed on February 21, 2005. Therefore, even if the date of filing preceded the beginning of the termination period for Liberian TPS, the application could only be accepted for late registration if the applicant meets one of the late filing criteria enumerated under 8 C.F.R. § 244.2(f)(2). The applicant has not established that he meets any of those criteria.

For the reasons discussed above, the denial of the application by the VSC Director will be affirmed.

It is noted that the applicant is subject to a Warrant of Removal/Deportation (Form I-205) that was issued on October 24, 2003, by the Interim Field Office Director in Baltimore, Maryland, pursuant to the order of an Immigration Judge. The warrant remains outstanding.

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 that burden.

ORDER: The appeal is dismissed.