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U.S. Citizenship
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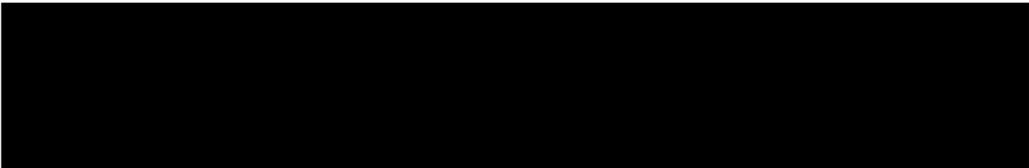


FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: FEB 26 2008
[EAC 06 012 70660]

IN RE: Applicant: [REDACTED]

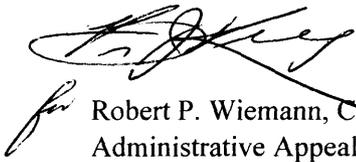
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.


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 (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be 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.

The record reveals that the applicant filed a TPS application on October 12, 2005, under Citizenship and Immigration Services (CIS) receipt number EAC 06 012 70660. On December 23, 2005, 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 has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). On January 26, 2006, the director denied the application, after determining that the applicant failed to establish that he has met the requirements for late registration.

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.

On appeal, counsel states that the applicant filed late "Because of the ineffective assistance of his previous attorney." The applicant has filed a complaint with state bar authorities regarding his previous attorney.

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.

The record indicates that the applicant had previously been granted TPS on September 11, 1997, during the 1998 TPS re-designation for Liberians. He was again granted TPS on February 27, 2003, and on October 10, 2003, during the October 2002 TPS designation for Liberians. However, the earlier designation terminated on July 30, 1999, and the latter designation terminated on October 1, 2004.

The applicant filed the current, initial TPS application (under the new re-designation) on January 3, 2006,¹ after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period he or 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 April, 18, 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 of his nationality and identity, and 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 noted that in response to the NOID, the applicant had succeeded in meeting all of the requirements for TPS, except the requirements for establishing his eligibility for late registration. The director, therefore, denied the application on May 31, 2006.

On appeal, counsel states that the applicant was misrepresented by previous counsel. According to current counsel, the applicant is clearly eligible for TPS and would have timely filed for TPS, but for his attorney's ineffectiveness. Counsel also states that the applicant has met the three criteria for raising a claim of ineffective counsel as set forth in *Matter of Lozada*, 19 I&N Dec. 637, 638 (BIA 1988). Specifically, the applicant has: 1) supported a motion to raise a claim of ineffective assistance of counsel with detailed affidavits setting forth the actions of his former attorney; 2) has written a letter to the former attorney outlining the allegations and given him the opportunity to respond; and 3) has filed a complaint against the attorney with state bar authorities. It is noted that no final disposition on this matter has been rendered. Furthermore, the applicant's former attorney contends that he was only contracted to evaluate the applicant's TPS file. He asserts that there was never an agreement to file the TPS application. The record contains two receipts from the applicant's former attorney. The first receipt, dated December 5, 2002 indicates that counsel was being paid to evaluate the case. The second receipt, dated August 15, 2003, does not indicate for what purpose counsel was being paid. It is also noted that the record does not contain any correspondence to previous counsel inquiring about the status of the application. Therefore, this raises the possibility that there was no ineffective counsel in this matter.

Counsel also asserts that the director erred in the categorization of the application under late initial registration as the applicant had previously held TPS status, and that the application should have been considered under good cause exception grounds and granted on that basis. Counsel further asserts that the director failed to recognize that, even under late initial filing regulations, the applicant qualified for TPS because during the initial registration period he had an application for relief from removal (his February 2005

¹ The applicant had earlier filed the initial TPS application on November 18, 2005, after the initial registration period for Liberians (from August 25, 2004 through February 21, 2005) had closed; however, the application was returned to the applicant because the form was not properly filled out and he had failed to submit the appropriate fees.

TPS application and an approved Form I-130 filed by his lawful permanent resident spouse). Counsel submits a copy of a TPS application that was stamped received on February 17, 2005, at the Service Center, with subsequent stamps on March 4, 2005 and on May 5, 2005. Counsel states that the application was returned to the applicant for incorrect filing fee, and the application had been sent to the wrong office; therefore, the application should have been considered under good-cause exception procedures.

8 C.F.R. § 103.2(a)(7) states, in part:

An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and....shall be regarded as properly filed when so stamped, if it is signed and executed and the required filing fee is attached or a waiver of the filing fee is granted. An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as non-payable will not retain a filing date.

As noted above, the TPS application was rejected and returned to the applicant based on incorrect filing fees; therefore, as provided in 8 C.F.R. § 103.2(a)(7), the February 17, 2005 filing date was not retained. The TPS application was properly received at the Service Center on January 3, 2006. Additionally, counsel's assertion that the application should have been considered under good-cause exception procedures is not persuasive. Good cause exception applies to aliens who have been approved TPS and had subsequently failed for good cause to register annually within 30 days before the end of each 12-month period after the granting of TPS. 8 C.F.R. § 244.17(c). If the applicant, in fact, is registering or re-registering based on a previous grant of TPS [during the October 2002 designation for Liberians], that earlier designation has terminated and the applicant's TPS benefits expired on October 1, 2004. Even if the applicant were eligible, approval of the application at this time (based on good cause) would serve no practical effect, since any decision rendered by the AAO would be subsequent to the date of the termination date of the authorized period.

The record shows that the applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on his behalf by his lawful permanent resident spouse. The record does not contain evidence that the applicant filed an application for adjustment of status to permanent residence (Form I-485), based on the approved Form I-130, that was pending during the initial registration period. The Form I-130, alone, does not convey eligibility for TPS.

It is further noted that the record indicates that on August 27, 1999, the applicant filed Form I-589, Application for Asylum and for Withholding of Removal. On January 4, 2000, prior to the registration period (under the new designation), the Form I-589 was denied.

Accordingly, 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 TPS application on this ground will be affirmed.

The Federal Bureau of Investigation fingerprint results report indicates that the applicant was arrested on June 20, 2003, in Brooklyn Park, Minnesota, for "theft." The final court disposition of this arrest is not included in the record of proceeding. CIS must address this arrest and/or conviction in any future decisions or proceedings.

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.