U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: FEB 0 7 2013 Office: VERMONT SERVICE CENTER FILE:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank, you,

for Ron Rosenberg
Acting 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 matter will be dismissed.

The applicant is a citizen of Honduras who is applying for 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 on May 3, 2012, after determining that the applicant was ineligible for late initial registration.

On appeal, counsel states that the director erred in denying the application, and asserts that the applicant is eligible for late initial registration for TPS as the applicant was in nonimmigrant status. Counsel submits a brief and additional evidence.

The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence. [1]

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 as designated by the Attorney General, now the Secretary, Department of Homeland Security (Secretary), is eligible for TPS 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 Secretary 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 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:

[1]The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

(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.

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. The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until July 5, 2013, upon the applicant's re-registration during the requisite period.

The record reveals that the applicant filed a TPS application on August 25, 2010 and indicated that he was re-registering for TPS. Along with his TPS application, the applicant also filed a Form I-765, Application for Employment Authorization, under the classification A-12 which was denied on July 1, 2009. The record contained no evidence that an initial TPS application had been filed. No motion was filed from the denial of this application.

The applicant filed the current TPS application on August 25, 2010, subsequent to the initial registration period and indicated that he was filing an initial TPS application.

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 U.S. Citizenship and Immigration Services (USCIS). 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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for

relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he or she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

The issue in this proceeding is whether the applicant is eligible for late initial registration for TPS.

Counsel contends that the applicant was admitted as an F-1 nonimmigrant, with D/S (duration of status) on January 3, 1995, and that as the applicant's F-1 status has not been revoked, he is eligible for late initial registration for TPS. According to counsel, the applicant is not required to establish that he is in valid nonimmigrant status to meet the exception under 8 C.F.R. § 244.2(f)(2)(i). Counsel asserts that USCIS policy establishes that the nonimmigrant status of an alien who was admitted in student status for duration of status is not considered to have expired or terminated until an Immigration Judge in removal proceedings or USCIS in an application for change of status or extension of status has made a determination regarding his or her status. In support, counsel references a Memorandum by Michael Pearson, *Executive Associate Commissioner, Office of Field Operations, dated March 3, 2000* (the "Pearson Memo"). Counsel also states that on September 27, 2010 an Immigration Judge terminated removal proceedings against the applicant on the ground that ICE had failed to establish the charge of removability.

Counsel is misguided in his reliance on the "Pearson Memo" in support of his contentions. The "Pearson Memo" provided guidance for the determination of the accrual of unlawful presence in the United States. The memo indicates that an alien may not be maintaining lawful status but would still not be unlawfully present in the United States. Therefore, a nonimmigrant student on an F-1 or J-1 visa who is granted "Duration of Status" or "D/S" may be out of status if not enrolled in a school but still not be accruing unlawful presence for purposes of the 3 and 10 year bars. Unlawful presence would only start accruing once USCIS or an Immigration Judge finds a status violation. Also, the termination by the immigration judge of removal proceedings against the applicant on the ground that ICE had failed to establish the charge of removability does not establish that the applicant has maintained his status as an F-1 nonimmigrant.

Counsel submits a Form I-797A, Notice of Action, dated December 14, 1995, which approved the applicant's F-1 status with authorization to remain in the United States for the duration of status.[2] USCIS record reflects that the applicant was admitted to the United States with F-1 status on January 15, 1996. The only evidence in the record of the applicant attending an educational institution is a copy of his identification card from [redacted] valid from September 1995 to September 1997. Counsel's assertion that the applicant's F-1 status has not been terminated is not supported by any corroborating evidence. The assertion of counsel does not

[2] Duration of status is defined in the regulation as the period during which the student "is pursuing a full course of study at an educational institution approved by the Service (USCIS) for attendance by foreign students, or engaging in authorized practical training following completion of studies." 8 CFR 214.2(f)(5)(i).

constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Although the applicant claims that he is in F-1 status, he has failed to establish his enrollment at an educational institution. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Contrary to counsel's contention, the applicant does not meet the requirements for the exception under 8 C.F.R. § 244.2(f)(2)(i). Also, there is no indication in the record that at the time of the initial registration period the applicant had a pending application for adjustment of status, change of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal. Therefore, the applicant does not qualify for any of the exceptions for late initial registrations under the provisions of 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS will be affirmed.

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 this burden.

ORDER: The appeal is dismissed.