



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



*MI*

FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: JUL 02 2007

[EAC 06 074 50147]

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 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 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 she was eligible for late registration.

On appeal, counsel submits a statement and additional evidence.

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.

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 indicates that the applicant had previously been granted TPS on September 30, 1998, during the 1998 TPS re-designation for Liberians. She 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,<sup>1</sup> after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period 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 her 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 her 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

---

<sup>1</sup> 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 she had failed to submit the appropriate fees.

all of the requirements for TPS, except the requirements for establishing her eligibility for late registration. The director, therefore, denied the application on May 31, 2006.

On appeal, counsel 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 she had an application for relief from removal (her February 2005 TPS application and an approved Form I-130 filed by her lawful permanent resident husband). 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. She 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 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 previously granted TPS [during the October 2002 designation for Liberians], that earlier designation had terminated and the applicant's TPS benefits expired on October 1, 2004. 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 her behalf by her 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 she 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.