

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



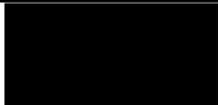
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

M1



FILE:



OFFICE: Philadelphia, Pennsylvania DATE: SEP 17 2007

consolidated herein]

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 Philadelphia District Office. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director in Philadelphia, Pennsylvania. It is now on appeal before the Administrative Appeals Office (AAO). The application 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 District Director denied the application on the ground that it was not timely filed.

On appeal counsel asserts that the application was properly filed within the registration period, and submits supporting documentation.

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.

The record shows that the applicant entered the United States as a nonimmigrant visitor (B-2) on March 1, 2000, with authorization to remain in that status until August 29, 2000. On November 6, 2000, the applicant filed a Form I-821, Application for Temporary Protected Status, at the District Office in San Antonio, Texas, which was approved by the District Director on January 23, 2001.¹

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. The TPS designation was subsequently extended, but on September 20, 2006, DHS announced the termination of TPS for Liberia, effective October 1, 2007.

The record shows that the applicant submitted a second TPS application, along with a fee waiver request and supporting documentation, to the District Office in Philadelphia, Pennsylvania, on February 14, 2005, during the initial registration period after Liberia's re-designation for TPS in August 2004. The District Office returned the application on February 17, 2005, however, with instructions to the applicant to submit additional evidence of her inability to pay the application fees (for the Form I-821 and a Form I-765, Application for Employment Authorization). The applicant then withdrew her fee waiver request and re-submitted her TPS application, which was filed at the Philadelphia District Office on March 3, 2005. Since this date was ten days after the close of the registration period on February 21, 2005, the District Director denied the TPS application on August 5, 2005.

On appeal the applicant points out that her application was initially received at the Philadelphia District Office on February 14, 2005, as evidenced by a receipt stamp on the Form I-821, that the application was mailed back to her on February 18, 2005, as evidenced by the postal stamp on the envelope, and that it was not received by the applicant until February 22, 2005, the day after the registration period closed. Thus, it was impossible for the applicant to file a timely TPS application once the District Office decided to return the application form to her. The applicant indicates that she decided to borrow the necessary money from friends and resubmit her applications for TPS and employment authorization with the required fees. The applicant asserts that her application should be considered as filed on February 14, 2005 – one week before the end of the registration period – since that is the date the Form I-821 was first stamped as “received” by the Philadelphia District Office. The AAO does not agree.

The regulation at 8 C.F.R. § 103.2(a)(7) provides, in pertinent part, as follows:

¹ This decision was legally incorrect since Liberia was not designated for TPS in 2000 and 2001. Liberia was designated for TPS during the 1990s, but that status had been terminated on September 28, 1999. The country was not designated for TPS again until October 1, 2002.

An application . . . received in a [CIS] 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 . . . which is . . . submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications . . . will not retain a filing date.

Thus, a receipt stamp alone does not establish that an application was filed on the date of the stamp. The application must either be accompanied by the filing fee or a waiver of the filing fee *must be granted*. In the case at bar, the applicant was *not* granted a waiver of the filing fee because she did not submit sufficient evidence with her application of her inability to pay. Therefore, the District Director properly rejected the application – as evidenced on the Form I-821 by an “X” in red ink over the original receipt stamp and the handwritten notation “rejected” – and returned it to the applicant. Though the applicant complains that she had no time after the rejection to file a timely application, she could have avoided this situation by submitting her application with the fee waiver request to the Philadelphia District Office earlier in the six-month registration period, or by submitting the requisite fee with her application, as she did after its initial rejection. Since a rejected application does not retain a filing date, the District Director properly found that the applicant’s Form I-821 was filed on March 3, 2005, the date it was stamped as received with the requisite filing fee.

The AAO concurs with the District Director’s denial of the application for TPS on the ground that it was not filed within the initial registration period that closed on February 21, 2005. There is no evidence in the record that the applicant is eligible for late TPS registration under any of the criteria enumerated at 8 C.F.R. § 244.2(f)(2).² Accordingly, the District Director’s denial of the application 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 that burden.

ORDER: The appeal is dismissed.

² The record shows that the applicant filed a Form I-589, Application for Asylum and for Withholding of Removal, on March 27, 2000, but it was denied by the Asylum Office Director in Houston, Texas, on June 9, 2000. The applicant did not appeal that decision.