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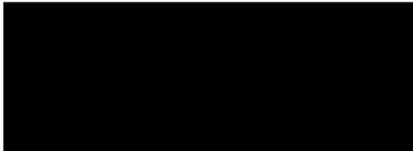
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
[EAC 06 013 70326]

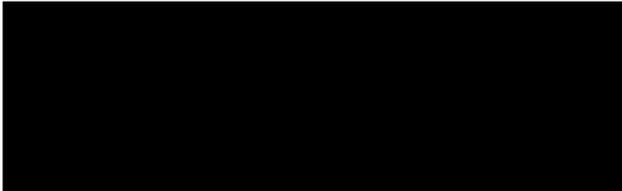
OFFICE: Vermont Service Center

DATE: SEP 28 2007

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 Vermont Service Center. Any further inquiry must be made to that office.

*Robert P. Wiemann*  
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 sustained, and the application approved.

The applicant is a 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 grounds that the applicant had failed to establish that she was eligible for late registration and that she had continuously resided in the United States and been continuously physically present in the United States for the requisite time periods.

The applicant filed a timely appeal and has submitted additional 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.

Liberia was designated for TPS on October 1, 2002 (after a previous TPS designation terminated in 1999). The initial registration period was from October 2, 2002 through 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 through February 21, 2005. On August 16, 2005, the TPS designation was extended to October 1, 2006. The registration period for the extension was from August 16, 2005 through October 17, 2005. On September 20, 2006, CIS announced the termination of TPS for Liberia, effective October 1, 2007. Extensions of TPS until that date were restricted to aliens who had already been granted TPS or who had previously-filed applications for TPS pending. The registration period for these final extensions was from September 20, 2006 through November 20, 2006.

The record shows that the applicant was originally approved for TPS by the Philadelphia District Office in 1999, and was approved again by the Newark District Office in August 2003 based on an application filed in January 2003. The applicant filed her next TPS application at the Missouri Service Center (MSC) on July 11, 2005. It was denied on September 29, 2005, by the Newark District Office on the grounds of (1) a false statement by the applicant that she had never been in immigration proceedings and (2) lack of prosecution, since the applicant only submitted page one of her application (Form I-821).<sup>1</sup> Though the decision did not mention this point, the application was filed after the closing date (February 21, 2005) of the initial registration period under Liberia's latest re-designation for TPS.

The applicant filed her next TPS application [EAC 06 013 70326] at the VSC on October 12, 2005. The director denied the application on March 6, 2006, on the grounds that the applicant had not registered for TPS during the initial registration period (August 25, 2004 through February 21, 2005) pursuant to Liberia's re-designation for TPS, and failed to establish her eligibility for late registration under one of the criteria enumerated at 8 C.F.R. § 244.2(f)(2), as well as her continuous residence in the United States since October 1, 2002, and her continuous physical presence in the United States from August 25, 2004, to the date she filed for TPS, in accordance with section 244(c)(1)(A)(i) and (ii) of the Act. The applicant filed her last TPS application at the VSC on October 15, 2006 [EAC 07 018 70235], during the registration period for final extensions. It was denied on April 11, 2007, because the applicant's previously filed Form I-821 had been denied. The applicant was advised that the decision could not be appealed.

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<sup>1</sup> Since the Form I-821 was not complete, the application was not properly filed.

The applicant appealed the director's decision of October 12, 2005 on EAC 06 013 70326, and submitted additional documentation of her residence and physical presence in the United States between 2002 and 2006. Based on this documentation and previously submitted evidence, the applicant has established her continuous residence since October 1, 2002, and her continuous physical presence since August 25, 2004. Accordingly, the applicant has overcome these bases for the denial of her application for TPS.

As for the issue of late filing, counsel for the applicant asserts that the applicant is eligible for late registration under 8 C.F.R. § 244.2(f)(2)(ii) by virtue of a pending asylum application. The record shows that the applicant filed a Form I-589, Application for Asylum and for Withholding of Deportation, at the VSC on March 31, 1997. On September 16, 1998, an Immigration Judge (IJ) in Philadelphia, Pennsylvania, denied the application and granted the applicant voluntary removal until November 16, 1998, with an alternate order of removal to Liberia. A motion to reopen was ultimately denied by the IJ on June 13, 2000.

On July 13, 2000, the applicant filed a Notice of Appeal to the Board of Immigration Appeals (BIA) in Philadelphia, requesting an oral argument before the BIA and indicating that a brief would be filed. The appeal contested the IJ's denial of the applicant's claim for relief as a battered spouse, which was set forth in the motion to reopen. On February 28, 2001, the BIA set a briefing schedule for the parties. On October 24, 2001, the BIA dismissed the applicant's appeal and affirmed the IJ's decision of June 13, 2000, denying the motion to reopen.<sup>2</sup>

Meanwhile, on October 23, 2000, the applicant submitted a motion to reopen at the Immigration Court in Philadelphia based on changed country conditions in Liberia, accompanied by a new Application for Asylum and for Withholding of Removal (Form I-589).<sup>3</sup> On October 31, 2000, the Government filed a response to the motion to reopen contending that it should be denied because the only circumstance allowing for the filing of more than one motion to reopen on an asylum application is changed conditions in the applicant's country, which the applicant had not shown with respect to Liberia.

On November 21, 2000, the IJ issued a Notice of Hearing in Removal Proceedings, which scheduled a master calendar hearing at the court on January 30, 2001. At the hearing on January 30, the IJ issued another Notice of Hearing in Removal Proceedings, which scheduled a master/individual hearing at the court on April 24, 2001. Counsel states that he and the applicant were excused from appearing at the April 24<sup>th</sup> hearing, as indicated by the judge's hand-written notation on the notice of January 30, 2001. On March 7, 2001, counsel for the applicant filed a supplemental memo on the issue of changed country conditions in Liberia.

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<sup>2</sup> On October 24, 2001, the same day as the BIA's decision, the INS District Director in Philadelphia issued a Warrant of Removal/Deportation (Form I-205) stating that the applicant was subject to removal from the United States based on a final order by the BIA.

<sup>3</sup> The record indicates that the motion was returned to the applicant on October 31, 2000, because of various deficiencies, and returned to the court in proper form on November 14, 2000. The date of filing, therefore, was November 14, 2000.

According to counsel, neither he nor the applicant received any further correspondence from the Immigration Court with respect to the motion to reopen. Counsel states that he sent a letter to the Executive Office for Immigration Review (EOIR) and the Immigration Judge in Philadelphia, dated August 4, 2003, advising that they had not heard anything about the motion to reopen since the scheduling of the hearing for April 24, 2001, and requesting that the motion to reopen and the new asylum application be granted. A copy of the letter is in the record. Counsel indicates that he received no reply from the EOIR or the IJ. Counsel contends that the motion and the new asylum application remain pending, thus making the applicant eligible for late TPS registration under 8 C.F.R. § 244.2(f)(2)(ii).

While the new asylum application bears no evidence of having been fee received by the Philadelphia District Office, the record indicates that the applicant's motion to reopen was filed on November 14, 2000, has never been adjudicated, and thus is still pending before the IJ in Philadelphia.<sup>4</sup> Therefore, the applicant is eligible for late initial registration under 8 C.F.R. § 244.2(f)(2)(ii) based on a pending motion to reopen her asylum application. Accordingly, this ground for denial has also been overcome.

The record indicates that the applicant meets the other requirements for TPS, and does not reveal any grounds of ineligibility for TPS. Therefore, the director's denial decision of March 6, 2006, will be withdrawn. The appeal will be sustained, and the application approved.

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 met that burden.

**ORDER:** The appeal of the director's denial of the late initial application [EAC 06 013 70326] is sustained. The application is approved.

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<sup>4</sup> While an application for asylum must ordinarily be filed within one year of the applicant's arrival in the United States, and no more than one asylum application can be filed, those restrictions do not apply if the application is based on changed country circumstances. See section 208(a)(1) and 208(a)(2)(B), (C), and (D) of the Act. Furthermore, while a motion to reopen asylum proceedings must ordinarily be filed within 90 days of "a final administrative order of removal, deportation, or exclusion," and no more than one motion to reopen can be filed on an asylum application, those limitations do not apply if the motion is based on changed country conditions. See 8 C.F.R. § 1000.23(b)(1) and 1000.23(b)(4)(i). The motion to reopen in this case, like the new asylum application, is based on changed country conditions.