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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

M1

FILE:

Office: CLEVELAND

Date: JUL 07 2010

IN RE:

Applicant:

APPLICATION:

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

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 office that originally decided your case. 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 office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Cleveland, Ohio, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed and the case will be returned to the director for further action.

The applicant is a native and citizen of Sudan 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 determined that the applicant failed to establish she was eligible for late registration and that she had not met the continuous residence and continuous physical presence requirements for TPS. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the applicant's initial TPS application was filed too early and that the applicant was not made aware of this until it was too late for her to submit a second timely application.

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 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 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:
 - (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.

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.

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.

On November 4, 1997, the Attorney General designated Sudan for TPS. Subsequent extensions or re-designations of TPS were made by the Attorney General and then the Secretary, Homeland Security (Secretary) on November 3, 1998, November 9, 1999, November 9, 2000, August 31, 2001, August 30, 2002, September 3, 2003, October 7, 2004, September 2, 2005, May 3, 2007, and August 14, 2008, with the latest extension granted until November 2, 2011 upon the applicant's re-registration during the requisite period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

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 United States 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).

The applicant has been assigned two separate A-files; [REDACTED] and [REDACTED]

The record reflects that the applicant entered the United States on February 16, 2002 as a B-2 visitor until August 15, 2002. The applicant filed a request for extension of her status at the Nebraska Service Center on July 29, 2002. A request for information was sent to the applicant on December 3, 2002, and the applicant's response was received on February 12, 2003. The applicant's Form I-539 was denied on April 26, 2004.¹

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. Department of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO will review the contents of both of the applicant's files and issue a new decision on the application that was properly filed on July 23, 2004, and contained in file [REDACTED]. It is noted that the TPS application filed on June 13, 2005 (referenced as Item No. 2 below) and contained in file [REDACTED], has not been adjudicated and will be returned to the director to render a decision on the merits.

In connection with the applicant's TPS application(s), the following documentation has been considered by the AAO:

Material in Alien File [REDACTED]

1. A "Notice Original Documents" sent to the applicant from the Nebraska Service Center, with a bar code receipt number [REDACTED], and the date July 29, 2002. The form states: "Attached are your original documents(s) that you recently sent this office in connection with your application or petition. A copy has been produced and placed in your filed [sic] application/petition. The form indicated that originals are no longer required for "initial" applications, and copies may be submitted unless the originals are requested.
2. The applicant's Form I-821, Application for Temporary Protected Status, signed by the applicant on May 4, 2004, and indicating it was the applicant's first application to register for TPS. The form bears the following date stamps: May 17, 2004; May 26, 2004; June 18, 2004; and, July 23, 2004. The May 17, 2004 date stamp indicates the Form I-821 was received on that date at the Cleveland (District) office, but the other date stamps do not identify the place where the application form was received.
3. Copies of pages from the applicant's passport issued by the Republic of Sudan, and a copy of a visa issued at the United States Embassy in Cairo on February 4, 2002, and a copy of the applicant's Form I-94, Arrival/Departure Record, which is stamped to show the applicant entered the United States at New York on February 16, 2002.

¹ This matter will not be discussed further in this proceeding except as it may relate to determining the applicant's eligibility for TPS.

4. A March 2, 2004 request for donation letter addressed to the applicant and signed by [REDACTED] Ohio, with a note indicating that [REDACTED] has just come to us. We're so glad he's here!"
5. Form G-343, dated May 19, 2004, returning the applicant's Form I-821, and fee, received on May 17, 2004, and instruction sheet [REDACTED]. The applicant was informed the \$275 fee submitted was correct, but both the fee and the application should be sent to the Nebraska [REDACTED]
6. A July 6, 2004, Notice of Rejection, addressed to the applicant from the Acting Director, Nebraska Service Center, returning the applicant's application (the type of application is not indicated) and filing fee of \$295.00, with instructions to file the application and fee at the "local or district INS office."
7. A Form I-797C, Rejection Notice, dated August 5, 2004, Receipt [REDACTED], for I-765, indicating it was being returned to the applicant along with the fee because the correct filing fee of \$175.00 had not been submitted. The applicant was instructed to resubmit the application with the correct fee to the US Bureau of Citizenship and Immigration Services, P.O. Box 805887, Chicago, Il 60680-4120. The notice was sent to the applicant at [REDACTED]
8. A U.S. Postal Service Priority Mail envelope, addressed to USCIS, [REDACTED] dated August 13, 2004.
9. A denial notice issued to the applicant on November 2, 2005, by the District Director, Cleveland, referencing file [REDACTED]
10. The applicant's appeal, Form I-290B, received on December 6, 2005, counsel's brief, a G-28 form, and copies of a Form I-821, signed by the applicant on February 23, 2005; a Form I-765, signed by the applicant on February 21, 2005; two copies of a June 13, 2005, receipt in the amount of \$295.00, issued by the Cleveland District Office, for payment of fees for a Form I-821 and Form I-765, under alien file [REDACTED]; and, an envelope addressed to the applicant and mailed by the Cleveland District Office on June 14, 2005.

Material in alien file [REDACTED]

11. A Form I-821, signed by the applicant on February 23, 2005, received at the Cleveland District Office and fee-stamped June 13, 2005.
12. Copies of Items Nos. 3 and 4, above.

The first issue in this proceeding is whether the applicant has established eligibility for late registration.

The applicant indicated on her TPS application that she entered the United States on February 16, 2002. The applicant submitted a copy of her Form I-94, Arrival/Departure Record, and other material in the record substantiates that claim. The first designation of Sudan under the Temporary Protected Status (TPS) Program was on November 4, 1997, with subsequent extensions and re-designations announced by the Attorney General and the Secretary on the dates stated above. There is no indication that the applicant attempted to file for TPS during the September 3, 2003 through November 3, 2003 registration period for the extension of the designation of Sudan under TPS announced on September 3, 2003. On October 7, 2004, the Secretary announced an extension and re-designation of TPS for Sudan, with a registration period from October 7, 2004 through December 6, 2004. The next extension of designation of Sudan for TPS was announced by the Secretary on September 2, 2005, with a registration period from September 2, 2005 through November 1, 2005.

On appeal, counsel states that the district director should have reviewed the TPS application prior to the end of the registration period, which would have allowed the applicant an opportunity to resubmit her TPS application.

A review of the record indicates that the applicant's did not submit a TPS application until May 17, 2004. The applicant's Form I-821 and fee were returned to the applicant on May 19, 2004, with instructions to submit them to the Nebraska Service Center. The TPS application and the fee were subsequently returned to the applicant by the Nebraska Service Center on July 6, 2004, with instructions to file them at a local or district office. According to the documentation in the file, the Form I-821 and fee were rejected again because they should have been filed at the Chicago Lockbox. The application was received after the September 3, 2003 through November 3, 2003 late registration period as designated in the September 3, 2003 announcement of the extension of TPS for Sudan, and prior to the registration period from September 2, 2005 through November 1, 2005 as announced by the Secretary on September 2, 2005. While it is clear that the applicant attempted to file for TPS, it is the applicant's responsibility is to be aware of the filing procedures for her TPS application. An application is not considered properly filed unless the completed application form and filing fee are received at the designated filing office within the period authorized for late initial registration. Therefore, the director's decision to deny TPS on this ground is affirmed.

The second issue in this proceeding is whether the applicant has established her continuous residence and continuous physical presence in the United States.

To be eligible for TPS during the period of registration from September 3, 2003 to November 3, 2003, the applicant must have continuous residence and continuous physical presence in the United States since November 19, 1999. To be eligible for TPS for during the period of registration from October 7, 2004 to December 6, 2004, and subsequent registration periods, the applicant must have continuous residence and continuous physical presence from October 7, 2004. The applicant has established that she entered the United States on February 16, 2002. Other than the letter from [REDACTED] of the Ratner School, there is little evidence to establish that the applicant has met the continuous residence and continuous physical presence requirements for TPS. The applicant has, therefore, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c).

Consequently, the director's decision to deny the application for temporary protected status on these grounds will also be affirmed.

It is noted that neither the applicant's file, [REDACTED], nor file [REDACTED], contains a copy of a decision on the Form I-821 application, submitted on June 13, 2005. The case is being returned to the director in order that he can adjudicate the TPS application and render a decision. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 and the case is returned to the director for further action.