

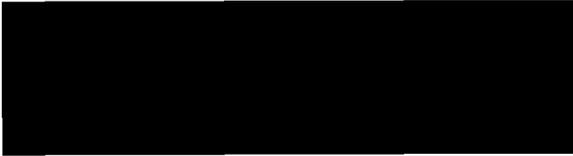
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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FILE:

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OFFICE: VERMONT SERVICE CENTER

DATE: **MAY 04 2010**

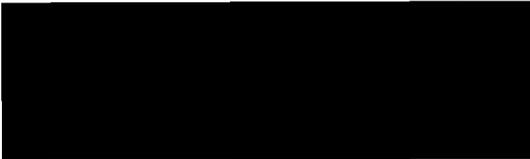
IN RE:

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

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 because the applicant failed to establish that she was eligible for late registration.

On appeal, counsel asserts that the applicant meets the requirements of a late registrant. Counsel contends that the director incorrectly interpreted the regulations at 8 C.F.R. § 244.2(f) and (g).

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 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.

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 granted until July 5, 2010, upon the applicant's re-registration during the requisite period.

The record reveals that the applicant filed a TPS application (WAC0531970041) on August 12, 2005. On August 17, 2005, the application was rejected due to incorrect fee. The applicant filed a second TPS application (WAC0613870025) on February 14, 2006, and indicated that this was her first application to register for TPS. The Director, California Service Center, denied the application on August 14, 2006, as the applicant had failed to establish she was eligible for late registration. On September 14, 2006, the applicant, through her former counsel, filed a motion to reopen/reconsider, which was denied by the director on September 27, 2006.

The applicant filed TPS applications on June 1, 2006 (EAC0624980424) and on December 14, 2006 (EAC0732670596). The applicant indicated on both applications that she was re-registering for TPS. The Director, Vermont Service Center, denied the applications on December 14, 2006, and October 11, 2007, respectively.¹ No appeal was filed from the denials of either application.

The applicant filed her current TPS application on December 23, 2008. 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 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

¹ The applicant was not eligible to apply for re-registration for TPS as her TPS application filed on February 14, 2006, had been denied. A previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. 8 C.F.R. § 244.17.

provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

On May 19, 2009, 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 establishing her qualifying residence and physical presence in the United States. The applicant, in response, provided documentation relating to her residence and physical presence in the United States. The applicant also provided evidence establishing her mother's eligibility as a TPS registrant.

The director determined that the applicant had failed to establish she was eligible for late registration as she was no longer a child at the time of filing her TPS application on December 23, 2008. Accordingly, the director denied the application on July 23, 2009.

On appeal, counsel asserts that if an applicant demonstrates eligibility in any of criteria described in 8 C.F.R. § 244.2(f)(2), she may be granted TPS. Counsel asserts, in pertinent part:

The Service however is reading 8 C.F.R. § 244.2 as (a) and (b) and (c) and (d) and (e) and (f) **and (g)**. Unfortunately, this is an incorrect reading of the regulation. A close reading shows an applicant must establish (a);(b);(c);(d);(e) and (f). This is it; no "and" in paragraph (f), as is in paragraph (e).

* * *

To interpret paragraph (f) (2) as allowing late registration **only within** 60 days of the termination of the conditions is simply incorrect.

* * *

The Service's interpretation, on a **quick glance** of the regulations, appears it would be plausible. Paragraph (g) clearly references subparagraphs (i)-(iv) in paragraph (f). One would think that if they talk about the same things they would be related. Referencing the same qualifying conditions however does not make the paragraphs dependent on each other. They are separate. They are independent times as to when an applicant can apply.

Counsel's assertions, however are specious. Section 101(b)(1) of the Act defines a child as an unmarried person under twenty-one years of age. The applicant did not file a perfected application when she qualified as a child as noted above. As she failed to file a perfected application when she was a child, subsection (g) allowed her to file a TPS application for late registration within 60 days of her 21st birthday.² The applicant filed her current TPS application 29 months subsequent to her 21st birthday. Subsection (g) cannot be read independently of subsection (f) as counsel argues. The

² The applicant was born on July 22, 1985.

applicant had two opportunities to obtain TPS; one when she was eligible as a child and the other within 60 days after she became 21 years old. The applicant failed to do so on these occasions. The applicant has not met the criteria for late registration described in 8 C.F.R. § 244.2(f)(2)(iv) or (g). 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.

Finally, the record reflects that on July 1, 1991, a Form I-221S, Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien, was issued. A removal hearing was held on September 4, 1991, and the alien was ordered deported *in absentia* from the United States. A Form I-205, Warrant of Deportation, was issued on February 13, 1992. On July 10, 2008, the applicant filed a motion to reopen before the Executive Office for Immigration Review (EOIR), which was denied on July 16, 2008. A motion to reconsider deportation proceedings, motion to change venue and a motion to stay deportation proceedings were filed on August 15, 2008. On September 25, 2008, the EOIR denied the applicant's motion to reconsider, motion to change venue and motion to stay deportation. On October 27, 2008, an appeal was filed before the EOIR. On April 28, 2009, the EOIR remanded the record to the Immigration Court for further proceedings.

ORDER: The appeal is dismissed.