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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FEB 18 2011

FILE:

Office: SEATTLE

Date:

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:

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 Vermont Service Center. 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 Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. 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 re-registration application was denied by the District Director, Seattle, Washington, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a 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 denied the re-registration application because the applicant failed to establish he had continuously resided in and had been continuously physically present in the United States since November 9, 1999.

On appeal, counsel for the applicant asserts that the applicant was admitted into the United States on July 28, 2001 with an F-1 student visa. Counsel asserts that the TPS application was approved; however, the applicant's re-registration application was subsequently denied because it was determined that his initial TPS application had been approved in error.

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, now the Secretary, Department of Homeland Security (Secretary), 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 Secretary 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.

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.

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 initial requisite registration period for nationals of Sudan was from November 4, 1997 to November 3, 1998. Persons applying for TPS offered to Sudanese must have demonstrated continuous residence in the United States since November 4, 1997. On November 9, 1999, the Attorney General re-designated Sudan under the TPS program, thereby expanding TPS eligibility to nationals of Sudan, who demonstrated continuous residence in the United States since November 9, 1999.¹ The registration period under the redesignation was from November 9, 1999 to November 2, 2000. The designation of TPS for Sudan has been extended several times, with the latest extension valid until November 2, 2011, upon the applicant's re-registration during the requisite time period.

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 U.S. 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 record reflects that the applicant filed his initial TPS application on September 19, 2002. The applicant submitted a copy of the biographical page of his U.S. F-1 visa which was issued on July 9, 2001 in Cairo. The applicant also submitted a copy of his Form I-94, Arrival-Departure Record,

¹ See 64 FR 61128.

which reflects that he was admitted into the United States on July 26, 2001, as an F-1 student. On February 20, 2003, the director approved the TPS application.

On July 1, 2004, the director issued a Notice of Action informing the applicant that he had entered the United States subsequent to the redesignation date of November 2, 2000 and, therefore, his TPS application was approved in error. Accordingly, the director denied the TPS application.

Counsel states that the applicant found out that Sudanese citizens may apply for TPS which would allow them to work in the United States. He asserts that the applicant applied for TPS, "with the intention that he would be able to bear some of his own expenses while in the United States, rather than relying completely on his family for financial support." Counsel's assertion is without merit. Although there are restrictions on employment, there are certain criteria that allow F-1 students to receive employment benefits. As such, the applicant could have applied for and received employment authorization while maintaining his F-1 visa status.

Counsel argues, in pertinent part, "but for U.S.C.I.S. gross negligence in initially approving [the applicant's] TPS application he would have maintained his student visa and remained in status. It defies all notions of justice and equity, that [the applicant] be penalized for a mistake that was of not his doing."

It is the applicant's responsibility to be aware of the filing procedures for his TPS application. The AAO is not required to approve applications where eligibility has not been demonstrated, merely because of a prior approval that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the district office is comparable to the relationship between a court of appeals and a district court. Just because the district director had approved the TPS application, the AAO is not bound to follow the contradictory decision of a district office. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The applicant arrived in the United States subsequent to the eligibility period. Therefore, he cannot meet the criteria for continuous residence in the United States since November 9, 1999, as described in 8 C.F.R. § 244.2(c). The AAO is bound by the clear language of the regulation and statute and lacks the authority to change them. 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.

ORDER: The appeal is dismissed.