

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

M₁

FILE: [REDACTED] Office: VERMONT SERVICE CENTER

Date:

JAN 06 2011

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:

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 application was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The order dismissing the appeal will be affirmed.

The applicant is a citizen of Honduras 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 application because the applicant failed to establish that she was eligible for late registration, and because she failed to establish she had continuously resided in the United States since December 30, 1998, and had been continuously physically present in the United States since January 5, 1999.

The AAO, in dismissing the appeal, on October 1, 2010, withdrew the director's findings regarding the applicant's failure to establish continuous residence and continuous physical presence during the requisite periods, but upheld the director's other finding that the applicant was not eligible for late registration. The AAO, in its decision, noted that the applicant had indicated that a brief and/or additional evidence would be submitted within 30 days, however, 60 days had passed and no additional correspondence had been presented.

On motion, counsel asserts that a brief was mailed to the AAO prior to the issuance of its decision. Counsel requests that the brief be reviewed and the applicant's application be reopened.

The AAO has determined that counsel's brief was timely submitted prior to issuance of its decision. As the applicant had overcome the continuous residence and continuous physical presence issues, this decision is solely limited to the review of the applicant's late registration eligibility.

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

A motion to reconsider must state the reason for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy ... [and] must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion, counsel asserts that the applicant along with her brother and mother applied for TPS in early 1999, and that the brother and mother were granted TPS. Counsel asserts, "the family did not understand why [the applicant's] employment authorization card did not arrive until recently. In fact, they did not know until recent months that [the applicant's] Form I-821 had been rejected for failure by the notaria to obtain [the applicant's] signature on her form on April 13, 1999."

Counsel submits an affidavit from the applicant's mother who asserted, "I never knew until now that [the applicant's] TPS application had been rejected because the notaria forgot to get [the applicant's] signature." The mother asserts that from 1998 to 2001, the applicant resided with her at 6604 Wisteria Drive, Apt. 6, Charlotte, North Carolina, and from 2001 to 2003, the applicant resided with her (the applicant's) father at [REDACTED]

The record reflects that a Form I-821, Application for Temporary Protected Status, was submitted on March 4, 1999. On April 13, 1999, a Form I-797C, Notice of Action, was issued and the TPS application along with fee was returned as rejected because the application was not signed by the applicant. The notice advised the applicant to sign the application and return it with fee to the address of the Texas Service Center listed on the notice. The notice was sent to the address of record at the time [REDACTED]

On June 3, 2003, the applicant filed a Form I-765, Application for Employment Authorization. On July 30, 2003, a notice was issued requesting the applicant to submit evidence of a properly filed TPS application during the registration period. The applicant, in response, provided a copy of the Form I-797C dated April 13, 1999. On September 18, 2003, the Form I-765 was denied, by the Director, Texas Service Center. The notice advised the applicant of the TPS application that was submitted in March 1999 and was rejected due to lack of signature. The notice indicated that although the applicant was advised to resubmit the TPS application with signature, she failed to do so and, therefore, no TPS application was ever filed. Both notices were sent to the applicant's address at the time [REDACTED]

As such, the assertions of counsel and the applicant's mother that the family was not aware of the rejected TPS application until recently are specious. It is noted that in response to the notice of July 30, 2003, the applicant also submitted a copy of the rejected TPS application. However, once again, the TPS application was not signed.

The record also reflects that each time (June 26, 2001 and July 8, 2002) the applicant submitted a Form I-765, a notice was sent to the applicant either advising her to submit evidence of a properly filed TPS application or denying the Form I-765 due to no evidence of a properly filed TPS application. Each notice was sent to the same address listed on her Form I-765. The applicant, however, failed to respond.

Counsel asserts, in pertinent part:

Prior to filing the I-821, we were told by the TPS office in Washington D.C. that although the applicant's status as a child had technically already expired within 60 days of turning twenty-one years of age to enroll in later registration, the Service had been and would be lenient with this condition if it merited favorable discretion.

As noted in our decision of October 1, 2010, section 101(b)(1) of the Act defines "child" as an unmarried person less than twenty-one years of age. Therefore, the applicant had to apply for TPS as a child of a TPS registrant before she turned twenty-one years of age. The regulation at

8 C.F.R. § 244. 2(f)(2)(g) provides 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. The AAO is bound by the clear language of the regulation and statute and lacks the authority to change them.

As a child of a TPS registrant, the applicant had numerous opportunities to submit a properly filed TPS application prior to her 21st birthday. The applicant, however, failed to do so. The applicant had 60 days after she turned twenty-one years of age to file a TPS application, but she failed to do so.

The burden of proof is upon the applicant to establish that he or she meets the requirements for the benefit sought and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet that burden. Therefore, the previous decision of the AAO will not be disturbed.

ORDER: The decision of the AAO dated October 1, 2010, is affirmed. The TPS application remains denied.