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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

M₁

[Redacted]

DATE: **OCT 11 2011** Office: VERMONT SERVICE CENTER FILE: [Redacted]

IN RE: Applicant: [Redacted]

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

ON BEHALF OF APPLICANT:

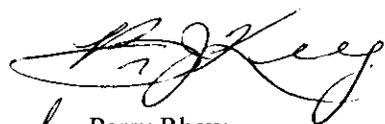
[Redacted]

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,


for 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 (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be 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: 1) had been convicted of two misdemeanors in the United States; 2) failed to establish that he was eligible for late registration; 3) failed to establish he had continuously resided in the United States since December 30, 1998, and 4) failed to establish he had been continuously physically present in the United States since January 5, 1999.

On appeal, counsel asserts that the applicant is eligible for late registration as his mother is currently a TPS registrant. Counsel asserts that the applicant "is a Honduran national who came to the United States on August 1, 1999 when he was 12 years old." Counsel asserts that had the applicant "been included in the [mother's] application he would have been granted Temporary Protected Status as an eligible Honduran national. [The applicant] would have been granted TPS before his conviction for two misdemeanors in 2006."

An alien shall not be eligible for TPS under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under the term "felony" of this section. For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 244.1.

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 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.
- (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.

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 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).

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 designation of TPS for Hondurans has been extended several times, with the latest extension valid until January 5, 2012, upon the applicant's re-registration during the requisite time period.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The first issue in this proceeding is whether the applicant is eligible for late registration.

The initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. The record reveals that the applicant filed this application on March 15, 2009. The applicant submitted copies of his mother's employment authorization cards.

In a recent decision, the Board of Immigration Appeals (BIA) held that the TPS regulations require that a late registrant be a "child" only "at the time of the initial registration period," not at the time when the application for late initial registration is filed." The BIA further held that the regulation at 8 C.F.R. § 244.2(g) does not apply to a child who seeks late initial registration for TPS benefits. See *Matter of N-C-M-*, 25 I&N Dec. 535 (BIA 2011).

In the instant case, during the initial registration period, the applicant was a child and his parent was a TPS registrant. In view of the BIA's recent decision, the applicant has established late registration eligibility. Therefore, the finding of the director that the applicant had failed to establish eligibility for late registration will be withdrawn.

The second and third issues in this proceeding are whether the applicant has established his continuous residence in the United States since December 30, 1998, and his continuous physical presence in the United States since January 5, 1999.

On his TPS application, the applicant listed his date of entry into the United States as August 1, 1999. In an affidavit notarized July 13, 2009, the applicant's mother, [REDACTED] stated in pertinent part, "I have personal knowledge that my son [REDACTED] came to the United States on August 1, 1999 when he came to live with me in Reading [,]Pennsylvania." On appeal, current counsel indicates that the applicant "came to the United States on August 1, 1999."

While regulations may allow children of TPS beneficiaries to file their applications after the initial registration period had closed; these regulations do not relax the requirements for eligibility for TPS. The child is still required to meet the residence and physical presence requirements as provided in 8 C.F.R. §§ 244.2(b) and (c). As stipulated in section 244(c), above, the Secretary designated the dates required to establish continuous residence and continuous physical presence as December 30, 1998 and January 5, 1999, respectively. The applicant, in this case, was not present in the United States during the requisite periods required to establish continuous residence and continuous physical presence. The AAO is bound by the clear language

of the statute and lacks the authority to change the statute. Consequently, the director's decision to deny the TPS application on these grounds will be affirmed.

The fourth issue in this proceeding is the applicant's criminal history.

The Federal Bureau of Investigation report reflects that on August 28, 2006, the applicant was arrested by the Hershey Police Department of Pennsylvania for simple assault.

In response to the notice dated June 16, 2009, which requested the applicant to submit certified judgment and conviction documents from the courts for all arrests, the applicant provided court documents from the Magisterial District Judge, County of Dauphin, Commonwealth of Pennsylvania. The court documents reflect that the applicant was charged with simple assault, disorderly conduct - hazardous/physical and harassment - course of conduct w/no legitimate purpose. The applicant pled guilty to violating 18 Pa. Cons. Stat. § 2709(a)(3), harassment - course of conduct w/no legitimate purpose, and 18 Pa. Cons. Stat. § 5503(a)(4), disorderly conduct - creates a hazardous or physically offensive condition which serves no legitimate purpose, both summary offenses. Case no. [REDACTED].

The maximum punishment for a summary offense is confinement in jail for not more than 90 days. See 18 Pa. Cons. Stat § 106(c)(2). As cited above, a misdemeanor is any offense that is punishable by imprisonment for a term of one year or less, *regardless of the term such alien actually served, if any.*

Contrary to counsel's assertion, the applicant would not have been granted TPS had he been included at the time his mother's application was filed. The applicant was not eligible for TPS because he arrived in the United States subsequent to the eligibility period. Assuming, arguendo, the application had been approved, the TPS would have been subsequently withdrawn. The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1).

The applicant is ineligible for TPS due to his two misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application on this ground will also be affirmed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

On June 19, 2009, the applicant was requested to submit certified judgment and conviction documents from the courts for all arrests. The applicant, however, failed to submit the final disposition for his arrest on May 4, 2004, in Reading, Pennsylvania for two counts of violating 18

Pa. Cons. Stat § 3503(a)(1), criminal trespass. The applicant is ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Therefore, the application must also be denied for this reason.

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 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.