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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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**DATE: APR 06 2012** Office: VERMONT SERVICE CENTER

**FILE:**

**IN RE:** Applicant:

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

**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, 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 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 during the initial registration period the applicant filed an application and, therefore, qualified under the definition of “any relief from removal.”

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 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.

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, 2013, 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 she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) 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 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 AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record reveals that the applicant filed her initial TPS application [REDACTED] on July 6, 1999. On May 19, 2004, the Director, Texas Service Center, denied the application due to abandonment. No motion was filed from the denial of that application.<sup>1</sup>

The applicant filed an application [REDACTED] on January 3, 2005, and indicated that she was re-registering for TPS. On May 17, 2005, the Director, California Service Center, denied that application as the applicant was not eligible to apply for re-registration for TPS due to the denial of her initial application. The AAO, in dismissing the appeal, on June 26, 2006, upheld the director's findings. The AAO, upon a *de novo* review, also determined that the applicant had

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<sup>1</sup> A denial due to abandonment may not be appealed, but an applicant may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

not submitted any evidence to establish that the application should be accepted under the late registration provisions.

The applicant filed an application [REDACTED] on June 5, 2006, and indicated that she was re-registering for TPS. That application was administratively closed on December 14, 2006, as the applicant was not eligible to apply for re-registration for TPS due to the denial of her initial TPS application.

The applicant filed the current TPS application on July 7, 2010. On July 20, 2011, 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, in response, only provided documentation relating to her residence and physical presence in the United States.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on September 2, 2011.

On appeal, counsel asserts, in pertinent part:

In the alternative, it should be noted that the 2006 decision indicates that the requests for additional evidence with regards to her initial application for TPS, were “mailed [REDACTED]. However, the records of the respondent show that she prepared a form AR-11, Alien’s Change of Address Card dated October 16, 2002 indicating her “present address” to be [REDACTED] (See attached copy). This record is different from the address CIS used to mail the respondent’s requests for additional evidence and could explain why she did not receive them.”

USCIS records do reflect that the applicant’s Form AR-11 was received and updated in its indices. However, the record reflects that the applicant subsequently submitted a TPS application and Form I-765, Application for Employment Authorization, which was received on July 11, 2003. Both applications and the envelope containing the applications listed her address as [REDACTED]. In our earlier decision of June 26, 2006, we inadvertently indicated that the notice of March 16, 2004, was not returned as undeliverable by the U.S. Postal Service. Nevertheless, the notice of March 16, 2004, was mailed to the applicant at her address of record at the time and, therefore, it was properly served on the applicant in compliance with 8 C.F.R. § 103.5a(a)(1). Moreover, there is no evidence that the Notice of Decision dated May 19, 2004, which was sent to the same address, was returned as undelivered.

On appeal, counsel states that the applicant “reasonably believed not only that her application for relief from removal was not only pending but that it had been approved after she received several approved work authorization.”

The record reflects that prior to the denial of her initial application, the applicant had filed four Forms I-765, which were granted. The fact that the applicant was granted employment authorization

is not evidence that she was approved TPS. Based upon filing of the Form I-821 application for TPS, an applicant is afforded temporary treatment benefits and is issued employment authorization upon establishing *prima facie* eligibility<sup>2</sup> for TPS pursuant to 8 C.F.R. § 244.5(b). As provided in 8 C.F.R. § 244.13(a), temporary treatment benefits terminate upon a final determination with respect to the alien's eligibility for TPS.

Contrary to counsel's assertion, having an TPS application filed during the initial registration period does not render an alien eligible for subsequent late registration under 8 C.F.R. § 244.2(f)(2). Taking counsel's argument to its logical extreme, an alien who had abandoned her initial application could then file a new application within 60 days after the abandonment, abandon the new application, and perpetuate this contempt of the application process indefinitely; thus enjoying the benefits of TPS without ever being approved for TPS and/or successfully completing the application process. The provisions for late registration detailed in 8 C.F.R. § 244.2(f)(2) were not created to allow aliens who had abandoned their initial applications to circumvent the normal application and adjudication process. Rather, these provisions were created in order to ensure that TPS benefits were made available to aliens who did not register during the initial registration period for the various circumstances specifically identified in the regulations. The applicant has not submitted any evidence to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). 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.

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<sup>2</sup> Pursuant to 8 C.F.R. § 244.1, *prima facie* means eligibility established with the filing of a completed application for TPS containing factual information that if unrebutted will establish a claim of eligibility under section 244 of the Act.