

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

[REDACTED]

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DATE: **DEC 19 2012** OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]
[REDACTED]
[REDACTED]

IN RE: Applicant: [REDACTED]

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

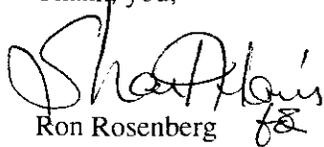
ON BEHALF OF APPLICANT:
[REDACTED]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg
Acting 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 is a native and 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 applicant filed the current Form I-821, Application for Temporary Protected Status, on January 3, 2012, and indicated that she was submitting an initial application for TPS. The director denied the application on May 17, 2012, after determining that the applicant had failed to establish her eligibility for late initial registration for TPS, her nationality, her continuous residence since December 30, 1998, and her continuous physical presence since January 5, 1999. The director noted that on March 13, 2012, the applicant was requested to submit evidence to establish her eligibility for TPS, but the response failed to overcome the reasons for the denial of the Form I-821.

On appeal, counsel asserts that the applicant is eligible for TPS because she has established her Honduran nationality, and the requisite continuous residence and continuous physical presence in the United States. Counsel submits additional evidence to support the appeal.

The record indicates that the applicant filed an initial TPS application on June 23, 2003, under U.S. Citizenship and Immigration Services (USCIS) receipt number [REDACTED]. The Director, Vermont Service Center (VSC), denied that application on February 18, 2004, because the applicant had failed to establish that she was eligible for late registration. On March 25, 2004, the applicant filed an appeal from the denial decision. The VSC director rejected that appeal on November 21, 2005, because it was untimely filed, and did not meet the requirements of a motion to reopen or reconsider pursuant to 8 C.F.R. § 103.5(a)(2) and (3). The director noted that the applicant also had not shown that she was eligible for late initial registration for TPS. The applicant filed a subsequent Form I-821 on December 8, 2004, and indicated that she was re-registering for TPS. The Director, California Service Center, denied the re-registration application on August 23, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

A subsequent appeal from the director's August 23, 2005 denial decision was dismissed by the AAO on March 3, 2008. The AAO affirmed the director's denial, and noted beyond the decision of the director, that the applicant did not establish the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c).¹ The AAO also noted that the record of proceeding contains a Form I-213, Record of Deportable/Inadmissible Alien, indicating that on March 9, 2003, the applicant, accompanied by her daughter (file number [REDACTED]) were apprehended by United States Border Patrol Agents while attempting to enter into the United States without inspection near the Eagle Pass, Texas, port of entry. The applicant stated at that time that they left Honduras and traveled through Guatemala and Mexico by bus for

¹ The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

several days, arriving in Piedras Negras, Coahuila on March 8, 2003, from where they made their illegal entry into the United States on March 9, 2003. Based on the applicant's illegal entry into the United States on March 9, 2003, the applicant could not have maintained continuous residence and continuous physical presence in the United States during the entire period specified in the regulations. 8 C.F.R. § 244.1. Accordingly, the AAO determined that the applicant has failed to establish her continuous residence since December 30, 1998, and continuous physical presence since January 5, 1999, as described in 8 C.F.R. § 244.2(b) and (c). Therefore, the appeal was also dismissed based on these additional issues.

As a threshold issue, the director denied TPS, in part, after determining that the applicant had failed to establish that she is a national of Honduras. It is noted that the record includes a photocopy of a page of the applicant's Honduras passport and her Honduran birth certificate (with an English translation) which establishes her identity and nationality. Therefore, the director's decision to deny TPS for this reason is withdrawn.

The remaining issues in this proceeding are whether the applicant has established her eligibility for late initial registration for TPS, her continuous residence since December 30, 1998 and her continuous physical presence since January 5, 1999.

The AAO described in its March 3, 2008 dismissal decision the reasons why the applicant failed to establish the requisite continuous residence and continuous physical presence in the United States. The AAO does not find it necessary to reiterate the basis for that determination as the record of proceedings still does not contain evidence to overcome these reasons for denial in the current TPS application.

The AAO now turns to whether the applicant has established her eligibility for late initial registration for TPS.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state 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, as defined in section 101(a)(21) of the Act, of a foreign 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 condition described in paragraph (f)(2) of this section.

The initial registration period for Hondurans was from January 5, 1999 through August 20, 1999. 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.

In our March 3, 2008 dismissal decision, the AAO noted that the applicant's counsel had asserted that the applicant is eligible for TPS because she has been residing in the United States since February 1992, and her spouse, [REDACTED] was granted TPS. It is noted that a copy of a marriage certificate indicated that the applicant and [REDACTED] were married in Bronx, New York, on March 18, 2004, and that a copy of [REDACTED]'s employment authorization card had been issued on July 25, 2005, under category A12.

The AAO discussed that the regulations may allow spouses of aliens who are TPS-eligible to file their applications after the initial registration period had closed, but that the applicant, in this case, was not married to [REDACTED] during the initial registration period as required by 8 C.F.R. § 244.2(f)(2). It is noted that on October 23, 1996, a Form I-130, Petition for Alien Relative, was filed on the applicant's behalf by her [former] United States citizen spouse; that a Form I-485, Application to Register Permanent Residence or Adjust Status, was simultaneously

filed on October 23, 1996; that on February 10, 1998, prior to the TPS initial registration period for Hondurans, the New York District Director denied the I-130 petition and the I-485 adjustment application. The record lacks evidence to establish the applicant's eligibility for late initial registration. The AAO finds that the applicant has failed to establish that she has met the requirements of 8 C.F.R. § 244.2(f)(2)(iv), or any of the other criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application will be affirmed.

While not the basis for the dismissal of the appeal, it is noted that the record reflects that the applicant was ordered removed from the United States, *in absentia*, to Honduras, by an Immigration Judge (San Antonio, Texas) on June 5, 2003. The record also contains a Warrant of Removal/Deportation, Form I-205, dated June 13, 2003.

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.