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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**

PUBLIC COPY

[REDACTED]

M,

DATE: Office: VERMONT SERVICE CENTER FILE: [REDACTED]

MAR 23 2012

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:

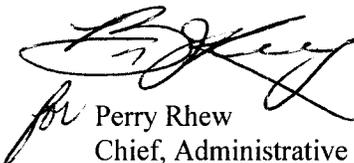
[REDACTED]

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 failed to establish that she was eligible for late registration. The director also found that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, counsel, citing several case laws, asserts that the applicant is eligible TPS as she is a national of Honduras and during the initial registration period she was a child of an alien who is currently a TPS registrant.

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.

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 July 5, 2013, 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 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. 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.

The record reveals that the applicant filed her initial TPS application [REDACTED] on November 12, 2008. On February 2, 1999, the director denied the application because the applicant had not established continuous residence and continuous physical presence in the United States due to her initial entry into the United States on June 27, 1999. No appeal was filed from the denial of that application.

The applicant filed the current TPS application on April 10, 2011.

On October 17, 2011, the director denied the current application because the applicant had not provided any new and compelling evidence that overcame the reason(s) for denying the initial TPS application.

The Board of Immigration Appeals (BIA) held that in order to qualify for late initial registration for TPS, an applicant filing as the “child of an alien currently eligible to be a TPS registrant” must establish that he or she 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. It was also 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. *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 her parents were TPS registrants, and USCIS records reflect that both parents are currently eligible to be TPS registrants. In view of the BIA’s 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 continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999.

The record contains a Form I-213, Record of Deportable/Inadmissible Alien, dated July 1, 1999, which indicates that the applicant admitted to entering the United States without inspection on June 27, 1999. On July 1, 1999, a Form I-862, Notice to Appear, was issued and served on the applicant. On March 14, 2000, the applicant’s case was administratively closed because of a finding that the applicant’s parents had filed for TPS.¹

¹ Administrative closing of a case does not result in termination of the proceedings. It is merely an administrative convenience, which allows the removal of cases from the calendar in appropriate situations. See *Matter of Gutierrez-Lopez*, 21 I&N Dec. 479 (BIA 1996).

Although the applicant has established that during the initial registration period, she was a child of aliens who were TPS registrants, the 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).

The statute provided in section 244(c) of the Act states that a national of a designated foreign state is eligible for TPS if, (i) the alien has been continuously physically present in the United States since the effective date of the most recent designation of that state; and (ii) the alien has continuously resided in the United States since such date as the Secretary may designate. 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. Therefore, she cannot meet the criteria for continuous residence and continuous physical presence in the United States. 8 C.F.R. § 244.2(b) and (c). 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.

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.

Finally, while not the basis for the dismissal of the appeal, it is noted that the record reflects that on August 24, 2011, a removal hearing was held and the applicant was ordered removed from the United States. On September 8, 2011, the applicant filed an appeal before the BIA, which is currently pending.

ORDER: The appeal is dismissed.