



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: JUN 17 2013 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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case.

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,

  
for  
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 matter 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 on December 22, 2011, after determining that the applicant was ineligible for late initial registration, and had failed to establish the requisite continuous residence and continuous physical presence in the United States.

On appeal, counsel states that the director erred in denying the application, and asserts that the applicant is eligible for late initial registration, and has established the requisite continuous residence and continuous physical presence in the United States. Counsel submits a brief and additional evidence.

The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.<sup>1</sup>

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 as 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:

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<sup>1</sup>The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

- (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.

*Continuously physically present* 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.

*Continuously resided* 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 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 valid until January 5, 2015, upon the applicant's re-registration during the requisite 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).

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

A review of the evidence submitted by the applicant throughout the application process and on appeal is sufficient evidence to establish her continuous residence and continuous physical presence in the United States during requisite periods. The applicant has, thereby, established that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Therefore, the director's decision to deny the application on these grounds will be withdrawn.

The third issue in this proceeding is whether the applicant is eligible for late initial registration for TPS.

The applicant filed this TPS application, on October 12, 2010, subsequent to the initial registration period and indicated that she was filing an initial TPS application.

Counsel contends that the applicant is eligible for late initial registration for TPS because she had been a permanent resident during the initial registration period, a status she derived when her Application for Adjustment of Status (Form I-485) was approved. The record reflects that the applicant gained permanent resident status as the beneficiary of a Petition for Alien Relative (Form I-130), filed on behalf of the applicant, and that she simultaneously filed a Form I-485 on September 30, 1997, which was approved on August 27, 1998. According to counsel, the Form I-485 was subject to review for a five year period after it was approved, and therefore, the applicant had an application of change of status which was subject to further review during the initial registration period and meets the exception under 8 C.F.R. § 244.2(f)(2)(ii).

The record reflects that on November 20, 2001,<sup>2</sup> a notice was issued advising the applicant of the legacy Immigration and Naturalization Service's intent to rescind her lawful permanent resident status as it determined that she was not eligible for adjustment of status at the time that the permanent residence was granted.<sup>3</sup> Pursuant to 8 C.F.R. § 246.2, if no answer is filed within the 30-day period, or if no hearing is requested within such period, the director shall rescind the adjustment of status previously granted, and no appeal shall lie from his or her decision.

Contrary to counsel's contention, the applicant does not meet the requirement of 8 C.F.R. § 244.2(f)(2)(ii). The applicant's adjustment of status was not pending nor was it subject to further

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<sup>2</sup> The notice was re-mailed via certified mail on June 28, 2002 as the applicant claimed she never received it.

<sup>3</sup> The applicant was ordered deported *in absentia* on July 13, 1993.

review or appeal. There is no indication in the record that at the time of the initial registration period the applicant had an application for adjustment of status, change of status, asylum, voluntary departure, or any relief from removal which was pending or subject to further review or appeal.

As provided in 8 C.F.R. § 244.2(g), the applicant had a 60-day period immediately following the rescission of her permanent resident status to file an application for late registration in order to meet the requirements described in 8 C.F.R. § 244.2(f)(2)(ii). As noted above, the TPS application was not filed until October 12, 2010. The applicant has failed to establish that she met the requirements for late registration described in 8 C.F.R. § 244.2(f)(2) and/or (g). Consequently, the director's conclusion that the applicant failed to establish her eligibility for late registration is 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.