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U.S. Citizenship
and Immigration
Services

Date: JUN 21 2013 Office: VERMONT SERVICE CENTER

IN RE: Applicant:

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

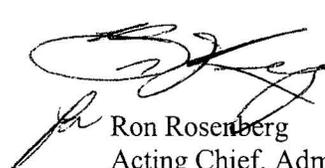
ON BEHALF OF APPLICANT:

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 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 request 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 that any motion must 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. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be granted. The AAO will remand the matter for further action by the director.

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 director determined that the applicant had failed to establish he was eligible for late registration and that the applicant had firmly resettled in Mexico and denied the application. The AAO, in dismissing the appeal, concluded that the applicant had not submitted sufficient evidence to establish that he had not resettled in another country prior to entering the United States, and that he had not shown that he was eligible for late initial filing for TPS.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration (USCIS) policy... [and] must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

On motion, counsel for the applicant states that the applicant missed filing a TPS application during the initial registration period because of ineffective assistance of counsel and that there is no evidence that the applicant was firmly resettled in Mexico. Counsel submits additional evidence for consideration.

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 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 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 January 5, 2015, upon the applicant's re-registration during the requisite time period.

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 he 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 United States 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 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 to August 20, 1999. The record reflects that the applicant filed his initial TPS application on June 29, 2007.

On September 14, 2007, the applicant was provided the opportunity to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The director determined that the evidence submitted by the applicant was not sufficient to establish eligibility for late registration, and denied the application on January 15, 2008.

On appeal, counsel for the applicant stated that the applicant missed filing a TPS application during the initial registration period because of ineffective assistance of counsel. The AAO determined that the applicant had not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2), and consequently, affirmed the director's decision.

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with the authorized representative with respect to the actions taken and what representations the representative did or did not make to the respondent in this regard (2) that the representative whose integrity or competence is being impugned, be informed of the allegations leveled against him/her and be given an opportunity to respond, and, (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 9 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F. 2d 10 (1st Cir. 1988).

On motion, counsel states that the applicant had consulted four attorneys prior to current counsel. She states that the applicant submitted:

“(1) a declaration from one former counsel admitting to ineffective assistance concerning his failure to advise [the applicant] to apply for TPS,

(2) Letters sent to his other three prior counsel regarding their failure to advise [the applicant] about his ability to apply for TPS, bar complaints concerning those counsel, and a

declaration from his current counsel describing the response (or lack thereof) of those counsel to phone calls and letters on this topic.”

In reviewing the entire record, the AAO concludes that the applicant in this case has a valid *Lozada* claim and has met all of the factors enunciated therein by submitting evidence that he provided proper notification to his former attorneys of the allegations against them, and establishing that he had filed complaints with the appropriate disciplinary authorities.

The AAO has determined that had the applicant not suffered ineffective assistance he could have timely applied for TPS during the initial registration period. Accordingly, the applicant’s TPS application will be considered to have been timely filed under the late initial filing provisions of 8 C.F.R. § 244.2.

The second issue in this proceeding is whether the applicant had firmly resettled in another country prior to the entering the United States.

The director noted in the denial decision that during the applicant’s removal proceedings, the applicant testified that at age 13 he relocated from Honduras to Mexico. According to the applicant’s testimony, this relocation to Mexico occurred with the assistance of the applicant’s church in Honduras. The applicant further testified that once he relocated to Mexico he lived there from 1988 to 1992 and he worked both as a bricklayer’s helper and as a mechanic shop helper. The director determined that the applicant had firmly resettled in Mexico and, therefore, denied the application on this basis.

On appeal, counsel stated that no evidence has been provided to establish that the applicant received an “offer of some type of official status” permitting him to permanently reside in Mexico. According to counsel, the applicant was in Mexico on an expired thirty day visa, never received any offer of permanent immigration status, and did not apply for any governmental services. The AAO determined there was insufficient information to support the applicant’s claim and concurred with the director’s finding.

As defined in 8 C.F.R. § 208.15, an alien is considered to be firmly resettled if, prior to arrival in the United States, he or she entered into another country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement.

On motion, counsel disputes the findings of the director and the AAO and asserts that the applicant was not firmly resettled in Mexico before entering the United States. Counsel claims that the applicant did not receive a “formal offer of some type of official status and he had only a temporary visa that expired after thirty days. She states that he “worked under the table” as a bricklayer’s helper and a mechanic’s helper” and was “without a work permit” during his undocumented stay in Mexico, he was unable to attend school because of his “fear of being apprehended by immigration authorities,” “he had to do without health care and other important government benefits, and “had to keep a low profile” and “avoid travel outside of Mexico during this time to avoid detection by the Mexican government. “ The record is devoid of any evidence that the applicant was granted or

offered permanent residence or any other official status in Mexico. Given the applicant's young age of thirteen at the time he entered Mexico and the lack of evidence that he had a right to remain permanently in Mexico, it must be concluded that the applicant was not firmly resettled in Mexico.

Based on the applicant's statements and documents provided on motion, the applicant has overcome the grounds for the denial of his TPS application. As there are no other known grounds of ineligibility, the director's decision to deny the applicant's TPS and the AAO's decision affirming the director's finding will be withdrawn. However, the validity period of the applicant's fingerprint check has expired.

Accordingly, the case will be returned for the purpose of sending the applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements. Following completion of this requirement, the director will render a new decision. Should the decision be adverse, the director must give written notice setting forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i), and the applicant shall be permitted to file an appeal without fee.

ORDER: The decisions of the director dated January 15, 2008, and the AAO dated May 11, 2011 are withdrawn and the case will be remanded to the director for further action consistent with the above.