



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: JUN 26 2013

Office: VERMONT SERVICE CENTER

[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:

[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 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 argues that the director's finding is in error and is not supported by the regulation.

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 January 5, 2015, 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 application (EAC9923050682) on July 19, 1999. On November 28, 2000, the application was denied due to abandonment. No motion was filed from the denial of that application.<sup>1</sup> The applicant filed a second TPS application and indicated that she was re-registering for TPS or renewal of temporary treatment benefits. On July 23, 2005, the Director, California Service Center, denied the application because the initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. The AAO, in dismissing the appeal on May 4, 2006, concurred with the director's findings. The AAO, upon a *de novo* review,<sup>2</sup> also dismissed the appeal because

<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).

<sup>2</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial

the applicant failed to establish her identity, nationality and continuous residence and physical presence during the requisite periods.

The applicant filed the current TPS application on October 3, 2011. Along with her application, the applicant provided a copy of a marriage certificate indicating she was married on August 11, 2001 to [REDACTED]. The applicant also provides a copy her spouse's employment authorization card (A12) valid through March 9, 2012.<sup>3</sup>

The director, in denying the current application, determined that because the applicant's marriage did not occur during the initial registration period for Hondurans, the applicant was not eligible for late registration as a spouse of an alien currently eligible to be a TPS registrant.

The applicant is attempting to acquire a benefit through her spouse who is a national of another TPS designated country. The applicant's marriage on August 11, 2001 occurred during the initial registration period for El Salvadorans. The regulation at 8 C.F.R. § 244.2, provides that an alien may in the discretion of the director be granted TPS if the alien establishes that he or she meets all the requirements listed in subparagraphs (a), (b), (c), (d), (e) and subparagraph (f)(1), or (f)(2).

Citing *Matter of Echevarria*, 25 I&N Dec. 512 (BIA 2011), counsel asserts that the applicant meets criteria for late registration as a spouse of an alien currently eligible to be a TPS registrant.

In *Echevarria*, the Board of Immigration Appeals noted that subsections (f)(1) and (2) are divided by the disjunctive conjunction "or" and that the provisions of subsection (f)(2) are not included in the eligibility requirements for initial TPS registrants in subsection (f)(1). The court found that subsection (f)(2), which is comprised of subparagraphs (i) through (iv), sets forth four separate and distinct conditions precedent for late initial registration for TPS. Applicants qualifying for late initial registration under one of the four conditions precedent set forth in subsection (f)(2) must still establish eligibility for TPS in accordance with subsections (a) through (e). *Id.* at 518-19.

However, pursuant to the regulations at 8 C.F.R. § 244.2, the applicant must meet all of the eligibility requirements for the designated country under 8 C.F.R. § 244.2 (a) through (e) and the requirement in subsection (f)(1) or (f)(2). In the instant case, the applicant's marriage to a current TPS beneficiary took place on August 11, 2001. As such, she was only a "spouse" during the initial registration period for El Salvador TPS, (March 9, 2001 through September 9, 2002) and not during the initial Honduras TPS registration period from January 5, 1999 through August 20, 1999. The regulations require that an applicant be married to her or his spouse during the initial registration period for her or his own TPS-designated country. As such, the applicant is not eligible for late initial registration and the director's decision denying the application for TPS is affirmed.

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decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d at 145.

<sup>3</sup> The spouse's employment authorization is currently valid through September 9, 2013.

An alien applying for TPS has the burden of proving that he or she meets the requirements and is otherwise eligible for TPS under the provisions of section 244 of the Act. The applicant has not met this burden.

ORDER: The appeal is dismissed.