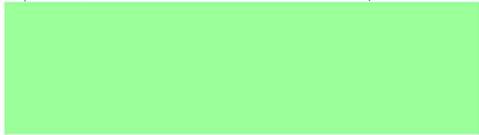




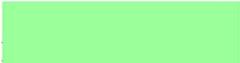
U.S. Citizenship
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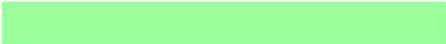
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DATE: **MAR 26 2013**

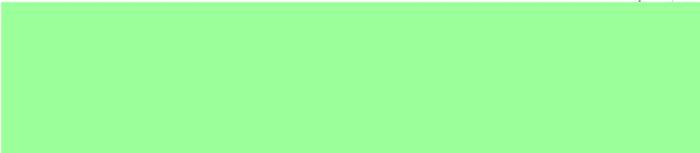
Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Applicant: 

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

ON BEHALF OF APPLICANT:

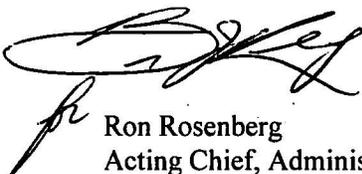


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. 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 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 denied the application because 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 asserts that the applicant has submitted sufficient evidence of her presence in the United States. Counsel states that the applicant is not required to submit evidence for each day present in the United States. Counsel states that the applicant's submission of a TPS application during the initial registration period gives "relief from removal pending or subject to further review or appeal." Counsel indicates at Part 2 on the appeal form that a brief and/or additional evidence would be submitted to the AAO within 30 days.¹ To date, no additional correspondence has been presented by counsel or the applicant. Therefore, the record must be considered complete.

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

¹ Every appeal submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. 8 C.F.R. § 103.2(a)(1). The Form I-290B instructs the applicant to submit a brief and additional evidence to the AAO within 30 days of filing the appeal.

(b)(6)

- (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 reflects that a hearing was held on June 5, 1996, and the applicant was ordered deported from the United States.

The applicant filed an initial TPS application [REDACTED] on March 10, 1999. On July 3, 2000, the TPS application was approved. On August 6, 2001, the applicant filed the required re-registration TPS application along with the Form I-765, Application for Employment Authorization, which granted employment authorization through July 5, 2002. The applicant filed the current TPS application on November 10, 2010, and indicated that she was re-registering for TPS.

On November 16, 2011, a notice was issued, which requested the applicant to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). Counsel in response, submitted Form I-797C, Notice of Action, dated April 16, 1999, and September 10, 2001, regarding the receipts of the initial and re-registration TPS applications and Forms I-765, and Forms I-797F/D regarding the approval of the Form I-765 on July 31, 1999 and September 17, 2001.

The director determined that the applicant had failed to establish she was eligible for late registration and denied the application on February 27, 2012.

Counsel seemingly implies that submitting a TPS application during the initial registration period renders the applicant eligible for late registration. Having an application for TPS pending during the initial registration period does not render an alien eligible for late registration under 8 C.F.R. § 244.2(f)(2). During the period for which the Secretary has designated a country for TPS, beneficiaries may not be removed from the United States. While TPS may confer benefits that temporarily delay the alien's removal, the temporary benefits of TPS do not equate to "relief from removal" under 8 C.F.R. § 244.2(f)(2). The provisions for late registration were created in order to ensure that TPS benefits were made available to aliens who did not register during the initial registration period (January 5, 1999 through August 20, 1999) for the various circumstances specifically identified in the regulations. The applicant, on appeal, has not submitted evidence that she has met one of those provisions outlined in 8 C.F.R. § 244.2(f)(2).

Consequently, the director's conclusion that the applicant had failed to establish her eligibility for late registration will be affirmed.

The second and third 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.

The director, in his decision, determined that the applicant had not submitted evidence of continuous residence and continuous physical presence for 2000, 2003, 2008 and 2009.

A review of the record reflects that at the time the applicant filed her re-registration application on August 6, 2001, she submitted a 2000 Form W-2 reflecting her wages of \$10,017.94. There is nothing in the record to suggest that this document is not legitimate. Therefore, the director's finding that the applicant had not submitted any evidence for the year 2000 will be withdrawn.

The affidavits from acquaintances issued in 2010 are not supported by any corroborative evidence, and they do not provide sufficient detail to establish that they had an ongoing relationship with the applicant that would permit them to know of the applicant's whereabouts and activities throughout the periods in question. Affidavits from acquaintances are not, by themselves, persuasive evidence of residence or presence.

The letter from the principal of [REDACTED] in Kansas City, Missouri lacks probative value. The affiant indicated that she has worked closely with the applicant since the beginning of the 2004 school year through the beginning of the 2010 school year and that, "both parents [the applicant and [REDACTED] have been actively involved with their child, [REDACTED] education and have attended all meetings and functions here at [REDACTED]. The affiant further indicated that she is including copies "of signed IDEA documents for [REDACTED] IEP's that show [the applicant] attendance and active participation in her daughter's education."

The IDEA document is not dated and, therefore, it cannot corroborate the affiant's letter. The affiant also provided a "contact log" for February 6, 2008 through August 25, 2010. The contact log only establishes that the applicant was present in March 2009, as it is the only time it referenced that the applicant "came in" for IEP meetings on March 5 and 11, 2009. The contact log indicated that on October 23, 2008, [REDACTED] was contacted and a progress report was given during a parent-teacher conference. However, the log did not indicate that both parents were present during the conference.

For 2003 counsel provided copies of Western Union money grams dated April 7, 2003 and August 3, 2003 and visa credit cards valid from November 2000 through October 2003 and from April 2001 through April 30, 2003. However, no evidence was provided to establish that these cards were used by the applicant in 2003, and the money grams alone are not sufficient to establish continuous residence and continuous physical presence in the United States.

It is unclear why the applicant would provide contemporaneous evidence such as bank statements, medical documents and pay stubs to establish her residence and physical presence for 2004, 2005, 2006 and 2007, but not for the years in question.

The record contains the applicant's Honduran passport, which was issued in Honduras on December 15, 2008, which suggests that the applicant had an unauthorized departure from the United States. Coupled with this fact and that the record is devoid of evidence that the applicant was continuously residing and was continuously physically present in the United States in 2008 and 2009, it can be concluded that the applicant failed to maintain continuous residence and continuous physical presence.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. She has, therefore, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will also be affirmed.

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

As noted above, the applicant's initial TPS application was approved and in filing the current TPS application she indicated that she was re-registering for TPS. Therefore, the AAO will explore the possibility that the applicant was attempting to file an annual re-registration instead of a late initial application for TPS.

The applicant must continue to maintain the conditions of eligibility as the regulation at 8 C.F.R. § 244.17(a) provides, in pertinent part:

Aliens granted Temporary Protected Status must re-register periodically in accordance with USCIS instructions. Such registration applies to nationals of those foreign states designated or redesignated for more than one year by DHS. Applicants for periodic re-registration must apply during the registration period provided by USCIS. ... By completing the application, applicants attest to their continuing eligibility.

If an alien fails to register without good cause, USCIS will withdraw TPS. USCIS may, for good cause, accept and approve an untimely registration request. 8 C.F.R. § 244.17(b)

Along with her current TPS application, the applicant provided a statement in the Spanish language with English translation, which reads:

I [the applicant], would like to explain the reason as to why I could not renew my t.p.s. in the time that I had to renew it my family and I were going through some financial problems and we had just moved from Florida to Kansas and we didn't have money for renewal in that time we were given the news that my grandmother had cancer and anything that we could make was for the medical expenses and they couldn't help me I tried to get it but I couldn't at that moment that is the reason as to why I could not renew my application for t.p.s. at that time for the lack of money.

This statement, however, is not persuasive. If the applicant could not afford the costs associated with the filing, nothing prevented her from including a written fee waiver request with her re-registration TPS application and Form I-765.

The record reflects that on January 12, 2011, a notice was issued, which requested the applicant to submit evidence that she had re-registered for TPS between July 1, 2000 and the current re-registration period or submit evidence that she had good cause for failing to re-register.

While the record reflects that the applicant filed a re-registration application on August 6, 2001; there is no evidence in USCIS database that subsequent re-registration applications were filed during each of the re-registration periods. Throughout this application process, the applicant fails to provide a good cause for failing to re-register. Therefore, the current application cannot be considered under good cause exception grounds and be granted on that basis.

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.