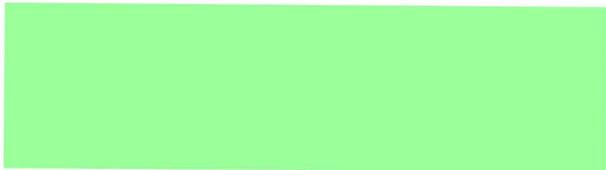


(b)(6)

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Service  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

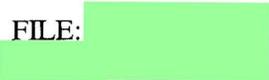


U.S. Citizenship  
and Immigration  
Services



DATE: **APR 08 2014**

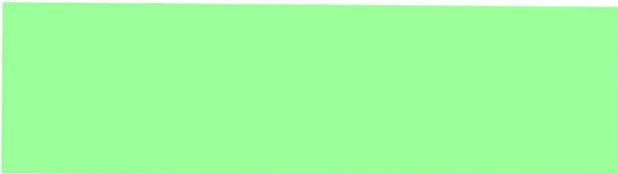
OFFICE: VERMONT SERVICE CENTER

FILE: 

IN RE: APPLICANT 

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

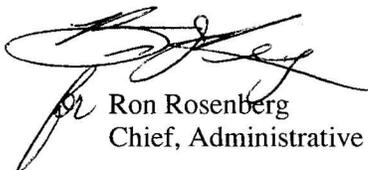
ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
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 case will be remanded for further consideration and action.

The AAO conducts appellate review on a *de novo* basis. See *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012).

The record reflects that the applicant submitted an initial Form I-821, Application for Temporary Protected Status (TPS), on June 27, 2002, under receipt number [REDACTED]. The Director, Texas Service Center, denied that application for abandonment on May 23, 2003, because the applicant failed to respond to an April 15, 2003 request to submit evidence to establish his eligibility for late initial registration, his continuous residence and his continuous physical presence in the United States, and a photo-identification. 8 C.F.R. § 103.2(b)(13). Pursuant to 8 C.F.R. § 103.2(b)(15), on December 8, 2003, the applicant filed a motion to reopen, which the director denied as untimely on March 26, 2004.<sup>1</sup>

The applicant filed another Form I-821 on June 29, 2004 under receipt number [REDACTED] and indicated that he was re-registering for TPS. The Director, California Service Center, categorized the application as a late initial registration, and denied that application on September 6, 2006, after determining that the applicant had failed to establish that he was eligible for late initial registration for TPS. The applicant appealed the director's decision. The AAO, in dismissing the appeal on September 4, 2007, affirmed the director's finding. The AAO conducted appellate review on a *de novo* basis,<sup>2</sup> and determined that the record indicated that on entry into the United States, the applicant stated that he was a national and citizen of Mexico. However, on his TPS application, the applicant claimed to be a national and citizen of Honduras. The AAO noted that although the applicant submitted documentation, including a photocopy of a Honduran birth certificate and the biographic page of a Honduran passport, he did not submit any explanation to address the discrepancies pertaining to his claimed Mexican nationality and citizenship in the record. Therefore, the AAO determined that for this additional reason the application must be denied.

The record reflects that the applicant filed the current Form I-821 on January 4, 2012. The Director, Vermont Service Center, denied the application on February 22, 2013, because the applicant failed to submit evidence to establish his eligibility for late initial registration. On appeal, counsel asserts that the applicant has established his eligibility for late initial registration for TPS<sup>3</sup> and submits

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<sup>1</sup> A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen.

<sup>2</sup> 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 (9<sup>th</sup> Cir. 2003); see also *Siddiqui v. Holder*, 670 F.3d at 741.

<sup>3</sup> Counsel also asserts that the director erred in stating that the applicant was a national of El Salvador instead of a national of Honduras. The AAO deems the director's error harmless as the director based the denial decision on the lack of evidence to establish the applicant's eligibility for late initial registration,

documentation, including tax returns, correspondences and U.S. Citizenship and Immigration Services (USCIS) notices.

On January 6, 2014, in a *de novo* review of the current appeal, the AAO requested that the applicant submit an explanation to address the discrepancies pertaining to his claimed Mexican nationality and citizenship in the record. The AAO notified that in order to meet his burden of establishing his eligibility for TPS, the applicant must provide this office with a statement describing the circumstances and a full explanation why he claimed to be a citizen of Mexico at the time of his apprehension on May 21, 1996. In response, counsel submitted an affidavit of a translation of the applicant's statement. The applicant attested that he was traveling with a group and they were instructed that if they were apprehended on entry they should state that they were Mexican nationals so that they would be returned to Mexico, and not to Honduras, because it would be easier for them to enter the United States from Mexico.

The AAO has considered the applicant's explanation of the circumstances surrounding his prior claim to be a national of Mexico. Also, as noted above, the record includes documentation, including the applicant's Honduran birth certificate, and the biographic page of a Honduran passport. The AAO concludes the applicant's explanation and documentation of record sufficient to establish that the applicant is a national of Honduras.

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

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 designated by the Attorney General 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 Attorney General 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

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and not on the applicant's nationality which the director identified as Honduran in a September 4, 2013, Notice of Intent to Deny.

- (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.

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. On May 11, 2000, the Attorney General announced an extension of the TPS designation until July 5, 2001. 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.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he or she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

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 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).

On appeal, counsel asserts that at the time the applicant filed his initial TPS application in June 2002, he was eligible for late initial registration as the beneficiary of a pending Form I-130, Petition for Alien Relative, filed by his spouse, a United States citizen, and he had pending a Form I-485, Application for Adjustment of Status. Counsel contends that the initial TPS application should not have been denied because the applicant applied for TPS within 60 days after he became aware that his Form I-485 had been terminated, and consequently the applicant is eligible for late initial registration for TPS.

The record of proceedings reveals that a Form I-485 and a Form I-130 on the applicant's behalf, were filed on December 4, 1996. However, on November 28, 2000, the Forms I-130 and I-485 were terminated. In order to be eligible for late initial registration, the applicant would have had to file the TPS application within 60 days of the date of the termination, in this case, by January 26, 2001. As noted above, the applicant did not file for TPS until June 27, 2002. The applicant states that he did not receive notice of termination of his Form I-485; that he was not aware of the status of his adjustment application; and that he did not receive notice of the November 28, 2000 interview.<sup>4</sup>

Upon further review, although both Forms I-130 and I-485 were terminated on November 28, 2000, the record of proceedings does not include documentation to establish the applicant was notified of the termination of his Form I-485. It is noted that on December 15, 2000, the applicant, through former counsel, signed a Form I-765, Employment Authorization Application, and indicated that he had a pending Form I-485. The Form I-765 was received by USCIS on January 2, 2001. It appears from the record that the applicant continued to seek employment authorization under the assumption that he had a pending Form I-485. It is not clear from the record when exactly the applicant became aware that his Form I-485 had been terminated. Without this evidence we cannot impute to the applicant knowledge of the termination and it would be reasonable that the applicant be given the benefit of the doubt that when he filed his initial TPS application on June 27, 2002, it was within 60 days after he became aware, or had reason to believe, that his Form I-485 had been terminated.

As it is not clear from the record whether, and when, the applicant had received the notice of the termination of his Form I-485 adjustment application, the case is remanded to the director to attempt to locate said decision. If the termination notice is located, it shall be incorporated into the record of proceedings and shall be forwarded to the AAO for final adjudication of the appeal. The director may request any additional evidence that he considers pertinent to assist with the determination of the applicant's eligibility for late initial filing if the Form I-485 termination notice cannot be obtained. Should the decision be adverse, the director must give written notice setting forth the specific reasons for the denial pursuant 8 C.F.R. § 103.3(a)(1)(i).

As always, the burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

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<sup>4</sup> The record reflects that the notice for the November 28, 2000 interview was mailed to the applicant's address of record, but was returned as undeliverable.

(b)(6)

*NON-PRECEDENT DECISION*

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**ORDER:** The case is remanded for further action consistent with the above and entry of a new decision, if warranted.