



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: JAN 22 2014

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:

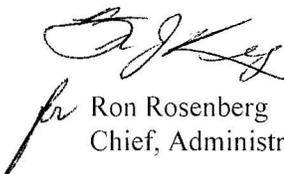
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. The Administrative Appeals Office (AAO) remanded the case to the director for further action. The Director, Vermont Service Center, denied the application again and the matter is now before the AAO on appeal. The appeal will be dismissed.

The applicant is 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 initially denied the application because it was determined that the applicant failed to establish continuous residence since December 30, 1998 and continuous physical presence since January 5, 1999 in the United States. The AAO withdrew the director's findings as evidence in the record clearly established the applicant's qualifying continuous residence and continuous physical presence in the United States. On June 26, 2012, the AAO remanded the case in order for the director to determine the applicant's eligibility under the late initial provisions.

On July 31, 2012, the director re-denied the application because the applicant failed to establish that she was eligible for late registration.

On appeal, counsel argues that the director's decision should be reversed as neither the statute nor the regulations required a late initial applicant's spouse to have actually applied 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 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 record reveals that the applicant filed her initial TPS application on June 10, 2008. The applicant presented her marriage license which indicated that she was married in the State of Texas on February 14, 1996 to [REDACTED] a Honduran, and a lawful permanent resident.

The director denied the application because there was no evidence that the applicant's spouse had applied for or was granted TPS status. USCIS records reflect that the applicant's spouse obtained lawful permanent residence on December 1, 1990.

Counsel's brief on appeal has been considered. However, contrary to counsel's assertions, the applicant's spouse has not established *prima facie* eligibility under section 244 of the Act.¹ An individual simply cannot be "eligible for" TPS without ever filing for the benefit. Being a national of a foreign state designated under section 244(b) of the Act does not automatically make one eligible for TPS. Consequently, the director's conclusion that the applicant had failed to establish her eligibility for late registration under 8 C.F.R. § 244.2(f)(2)(iv) will be 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.

¹ Pursuant to 8 C.F.R. § 244.1, *prima facie* means eligibility established with the filing of a completed application for TPS containing factual information that if unrebutted will establish a claim of eligibility under section 244 of the Act.