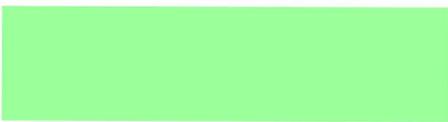




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUL 23 2014

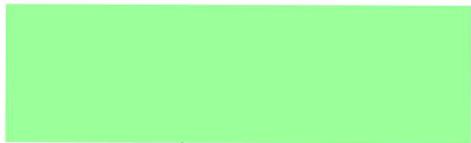
Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Applicant: 

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

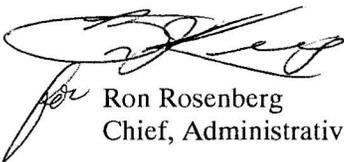
ON BEHALF OF APPLICANT:



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,



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 action and consideration.

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. On September 13, 2013, the director denied the application because the applicant failed to establish that she was eligible for late registration.

On appeal, counsel asserts that the decision to deny the application for late registration under section 8 C.F.R. § 244.2(f)(2)(iv) was incorrect. Counsel states that the applicant not only registered for TPS “during the initial registration period but every re-registration period since February 5, 1999.” Counsel further states that a removal order *in absentia* had been issued prior to the TPS designation for Honduras; that the applicant was denied due process of law; and that it was the applicant’s intent at that time to file for asylum.

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.

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

Counsel, on appeal, provides a photocopy of the last page of a Form I-821, Application for Temporary Protected Status, dated February 2, 1999, to support his assertion that the applicant had filed for TPS during the initial registration period.

The record, however, does not support counsel's assertion. The record indicates that on January 14, 1999, a Form I-765, Application for Employment Authorization () was filed, and that on January 21, 1999, the Form I-765 was rejected due to incorrect/no fee. The record contains evidence of a photocopied Western Union money order (with receipt) dated January 30, 1999 in the amount of \$100 addressed to the legacy Immigration and Naturalization Service (INS). It is not clear if this money order was sent to the legacy INS because on March 26, 1999, the fee for Form I-765 was waived. A Request for Additional Evidence was issued on December 3, 1999, requesting, in part, that the applicant provide evidence that a Form I-821 had been submitted. There is no evidence in the record that the notice was returned as undeliverable or that the applicant responded to the request. If a Form I-821 had been submitted on or about February 2, 1999, it is unclear why only evidence of a money order relating to the filing fee for the Form I-765 was provided.¹

¹ During the initial registration period for Honduras, the filing fee for Form I-765 was \$100 and \$50.00 for the Form I-821.

The applicant submitted another Form I-765 [REDACTED] which was filed on September 5, 2000. The Form I-765 (C19), however, was approved in error on October 24, 2000, as there is no evidence that the required Form I-821 had been filed. The applicant filed her initial TPS application ([REDACTED]) on November 16, 2001 subsequent to the initial registration period.

The record also reflects that an Order to Show Cause/Notice of Hearing, Form I-221, was issued on December 15, 1996. A deportation hearing was held and the applicant was ordered deported *in absentia* on March 4, 1997. The applicant filed a motion to reopen the *in absentia* order of removal and indicated that she did not receive the Form I-221. Although the motion was untimely filed, on February 23, 2012, the immigration court found that the applicant had established that she failed to appear due to "Lack of Notice" and issued an order granting the motion.² As the applicant's removal proceedings were reopened, the applicant is eligible for late registration under 8 C.F.R. § 244.2(f)(2)(ii). Therefore, the decision of the director will be withdrawn.

The case will be remanded to the director for further adjudication of the application including sending the applicant a fingerprint notification form, and affording her the opportunity to comply with its requirements.³ The director may request any additional evidence that he considers pertinent to assist with the determination of the applicant's eligibility for TPS. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn. The case is remanded for further action consistent with the above and entry of a new decision.

² 8 C.F.R. § 1003.23(b)(4)(iii)(2).

³ The validity period of the applicant's fingerprint check has expired.