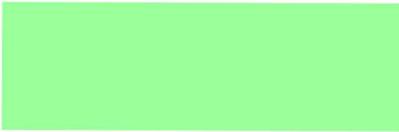




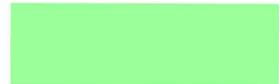
U.S. Citizenship  
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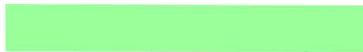


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Office: VERMONT SERVICE CENTER

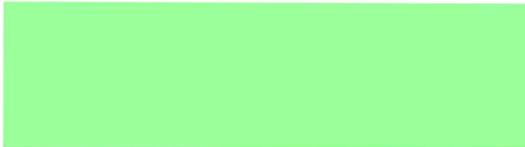


IN RE: Applicant:



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. 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,

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 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.

On March 21, 2014, the director denied the application because the applicant failed to establish that he was eligible for late registration. The director also denied the application because the applicant failed to maintain continuous residence and continuous physical presence in the United States due to his removals from the United States in 2002, 2003 and 2006.

On appeal, counsel puts forth a brief disputing the decision that denied the applicant's initial TPS application in 2001. Counsel states that the applicant is eligible for TPS as a late initial registrant as his initial application was adjudicated based on an incorrect application of law. Counsel asserts that as each departure from the United States occurred following the initial denial for TPS, the applicant should not be penalized by the director's circumvention of the law.

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
  - (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, 2016, 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 *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The first issue to be addressed 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 he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The record reflects that the applicant filed his initial TPS application [REDACTED] on June 7, 1999. On March 23, 2001, the District Director, Fresno, California denied the application as it was determined that the applicant was inadmissible under 212(a)(6)(B) of the Act for failing to appear on September 13, 1996 at the Los Angeles District Office.<sup>1</sup> The applicant was given the opportunity to file an appeal from the denial of that decision; however, the applicant failed to do so.

Section 212(a)(6)(B) of the Act, as amended by section 301(c)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) provides:

Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

Section 309 of the IIRAIRA at 3009-625 provides:

(a) IN GENERAL.—Except as provided in this section and sections 303(b)(2), 306(c), 308(d)(2)(D), or 308(d)(5) of this division, this subtitle and the amendments made by this subtitle shall take effect on the first day of the first month beginning more than 180 days after the date of the enactment of this Act (in this title referred to as the “title III–A effective date”).

Accordingly, the effective date of the IIRAIRA is April 1, 1997 with regard to aliens unlawfully present after previous immigration violations. As such, the district director's decision was issued in error. This error, however, does not meet the criteria for late registration described in 8 C.F.R. § 244.2(f)(2), and does not mitigate the applicant's failure to appeal the decision of March 23, 2001.

The applicant filed another TPS application [REDACTED] on August 23, 2011, which was denied by the Director, Vermont Service Center, on December 14, 2011. Based on the applicant's removal from the United States on three separation occasions, the director determined that the applicant had failed to establish eligibility for late registration, continuous residence in the United States since December 30, 1998 and continuous physical presence in the United States since January 5, 1999. The applicant appealed the director's decision. In dismissing the appeal, on May 25, 2012, we concurred with the director's findings.

<sup>1</sup> On July 17, 1996, a deportation hearing was held and the applicant was ordered deported *in absentia*. A Form I-166 was executed on August 9, 1996.

The applicant filed a third TPS application [REDACTED] on January 3, 2012. On January 10, 2013, the director denied the application due to abandonment after determining that the applicant had failed to respond to a Notice of Intent to Deny (NOID) dated May 3, 2012. No motion was filed from the denial of that application.<sup>2</sup>

The applicant filed the current TPS application on March 22, 2013. The director, in denying the application, determined that the applicant was ineligible for late registration as a previous filed TPS application did not meet the definitions of a qualifying condition under 8 C.F.R. § 244.2(f)(2). The director determined that TPS applications did not equate to “relief from removal” obtained through an adjustment of status, cancellation of removal, discretionary relief, recommendation against deportation, or suspension of deportation.

The provisions for late registration detailed in 8 C.F.R. § 244.2(f)(2) were created in order to ensure that TPS benefits were made available to aliens who did not register during the initial registration period for the various circumstances *specifically identified* in the regulations. The applicant’s circumstances outlined by counsel on appeal do not meet any of the criteria described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

The second and third issues in this proceeding are whether the applicant has established continuous residence in the United States since December 30, 1998, and continuous physical presence in the United States since January 5, 1999.

The director, in denying the application, also determined that the applicant did not meet the requirement for continuous residence and continuous physical presence in the United States due to his previous removals from the United States.

The record reflects the following:

- On May 15, 2002, the applicant applied for admission into the United States from Mexico.<sup>3</sup> On May 31, 2002, a hearing was held and the applicant was removed from the United States. A Form I-205, Warrant of Removal/Deportation, dated May 31, 2002, establishes that the applicant was removed from the United States on July 10, 2002.
- On February 25, 2003, the applicant applied for admission into the United States from Mexico.<sup>4</sup> On February 27, 2003, a Form I-860, Notice of Order of Expedited Removal, was issued and the applicant was expeditiously removed from the United

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<sup>2</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>3</sup> The applicant declared himself to be a United States citizen.

<sup>4</sup> The applicant declared himself to be a lawful permanent resident.

States under section 235(b)(1) of the Act.<sup>5</sup> The Form I-296, Notice to Alien Ordered Removed/Departure Verification, shows that the applicant was removed via air from the [REDACTED] on March 18, 2003.

- On or about August 29, 2006, the applicant attempted entry into the United States from Canada. A Form I-205 dated August 29, 2006, establishes that the applicant was removed from the United States on September 2, 2006.

Contrary to counsel's assertion, the denial of the initial application for TPS in 2001 did not trigger the applicant's removal. The applicant, who was already outside of the United States, was removed on July 10, 2002, because he falsely represented himself to be a citizen of the United States for a purpose or a benefit under the Act or any other federal or state law. *See Form I-862, Notice to Appear*, dated May 15, 2002.

Congress provided no relief for failure to maintain continuous residence due to a departure under an order of removal. Relief is provided for absences based on factors other than deportation, namely absences due to emergencies and absences approved under the advance parole provisions. 8 C.F.R. § 244.1(2).

It is noted that the record contains a photocopy of an identification document issued July 28, 2000 by the Mexican government under the "Programa Nacional De Regularizacion Migratoria".<sup>6</sup> This document contains the applicant's photograph and right thumbprint, which is further evidence that the applicant was outside of the United States during the operable time-frame. USCIS records do not indicate that the applicant was granted advance parole for this departure.

As a result of each removal the applicant has not continuously resided and has not been continuously physically present in the United States during the requisite periods. He has, thereby, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). We are bound by the clear language of the statute and regulations and lack the authority to change them. Consequently, the director's decision to deny the application for TPS on these grounds will be affirmed.

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

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<sup>5</sup> Section 235(b)(1)(A)(i) provides - If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 212(a)(6)(C) or 212(a)(7), the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 208 or a fear of persecution.

<sup>6</sup> National Program for Migratory Regularization.

(b)(6)

*NON-PRECEDENT DECISION*

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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.