



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 17705889

Date: NOV. 30, 2021

Appeal of Vermont Service Center Decision

Form I-821, Application for Temporary Protected Status

The Applicant seeks review of a decision withdrawing her Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a.

The Director of the Vermont Service Center withdrew the Applicant's TPS indicating that she did not appear for a scheduled fingerprinting appointment and did not respond to a subsequent request for evidence (RFE) to show that she complied with this requirement.

On appeal, the Applicant explains the reason she did not attend her fingerprinting appointment, points out that her biometrics were reused during a previous TPS re-registration, and requests her TPS to be reinstated.

The burden of proof in these proceedings rests solely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, and for the reasons explained below we will remand the matter to the Director for further proceedings consistent with this decision.

The record reflects that the Applicant is a national of Honduras who was granted TPS in 2000. Individuals granted TPS must re-register periodically during a re-registration period provided by U.S. Citizenship and Immigration Services (USCIS) and in accordance with USCIS instructions. 8 C.F.R. § 244.17(a). To re-register, applicants must complete the Form I-821 in accordance with the form instructions, and submit all documentation as required in the instructions or requested by USCIS. 8 C.F.R. §§ 244.6(a), 244.9(a). The Form I-821 instructions state, in pertinent part that TPS applicants who are over 14 years of age must provide fingerprints, photographs, and digital signature, referred to as "biometrics."<sup>1</sup>

The Director may withdraw the status of an applicant granted TPS under section 244 of the Act at any time if the applicant: (1) was not in fact eligible at the time TPS was granted or later becomes ineligible, (2) has not remained continuously physically present in the United States from the date of the initial TPS grant, or (3) does not re-register for TPS without good cause. 8 C.F.R. § 244.14(a)(1)-(3).

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<sup>1</sup> See page 13, Instructions for Form I-821, <https://www.uscis.gov/i-821>.

The Applicant last filed a Form I-821 to re-register for TPS in July 2018. While processing that re-registration request, USCIS notified the Applicant that it was not necessary for her to appear at an Application Support Center (ASC) for a biometrics appointment because USCIS was able to reuse her previously captured “fingerprints and other biometrics.” A month later, in August 2018, USCIS approved the Applicant’s Form I-821 and extended her TPS validity period until January 5, 2020. USCIS also approved the Applicant’s concurrently-filed Form I-765, Application for Employment Authorization, with the same validity date.

On November 4, 2019, USCIS announced through a Federal Register notice that the validity periods of the benefits granted to certain TPS beneficiaries, including Honduran nationals, would be automatically extended through January 4, 2021.<sup>2</sup> The notice stated, in relevant part that current beneficiaries under the TPS designation for Honduras did not need to pay a fee or file any application (including Form I-765) to maintain their TPS benefits through January 4, 2021, provided that they had properly re-registered for TPS during either the most recent registration period for their country, or any applicable previous registration periods, which for Honduran TPS beneficiaries included the period from June 5, to August 6, 2018.<sup>3</sup> According to the notice, to prove their continued lawful status and employment eligibility to law enforcement, Federal, state, and local government agencies, and private entities TPS beneficiaries could show, in part a copy of that notice along with their previously issued employment authorization documents that have been automatically extended.<sup>4</sup>

Nonetheless, in January 2020, the Applicant filed a Form I-765 for TPS-based employment authorization, and the Director issued a notice advising her of the date, time, and place of her biometrics capture appointment, stating that if she failed to appear as scheduled her application would be considered abandoned. Because the record did not show that the Applicant attended the appointment, in June 2020 the Director notified the Applicant in the RFE that her “Form I-821 . . . and/or Form I-765 . . .” could not be processed until she appeared at an ASC for the collection of biometrics, and that “[f]ailure to attend [her] ASC appointment [would] result in the denial and/or withdrawal of [her] TPS.” Because the Applicant did not respond to the RFE, the Director reopened the Applicant’s approved 2018 TPS re-registration Form I-821, withdrew her TPS in December 2020, and denied her Form I-765 on the basis that her TPS had been withdrawn.

The Applicant asserts that she never received the biometrics appointment notice, and that when she received the RFE she called USCIS at the phone number provided and was informed by a USCIS representative that a new appointment notice would be sent to her. The Applicant explains that while she was awaiting that new notice she was notified that her TPS was withdrawn for failure to appear at the ASC.

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<sup>2</sup> *Continuation of Documentation for Beneficiaries of Temporary Protected Status Designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal*, 84 Fed. Reg. 59403 (Nov. 4, 2019). This period was subsequently extended until October 4, 2021, and most recently through December 31, 2022. See 86 Fed. Reg. 7928 (Dec. 20, 2020); 86 Fed. Reg. 50725 (Sept. 10, 2021).

<sup>3</sup> See 84 Fed. Reg. at 59405 n.1.

<sup>4</sup> See 84 Fed. Reg. at 59407. The automatically extended employment authorization documents included those that were issued, as in this case with validity until January 5, 2020. *Id.* See also USCIS Newsroom, *DHS Extends TPS Documentation for Six Countries* (Nov. 1, 2019), <https://www.uscis.gov/news/alerts/dhs-extends-tps-documentation-for-six-countries>.

As an initial matter, the Director generally referenced the regulations at 8 C.F.R. § 244.14(a)(1)-(3) in the TPS withdrawal decision, but did not identify the specific basis for the withdrawal. The Director did not indicate that the Applicant was statutorily ineligible for TPS or later became eligible, or that she did not meet the continuous physical presence requirements, as provided in the regulations at 8 C.F.R. 244.14(a)(1)-(2). The record also does not show that the Applicant was subject to TPS withdrawal under 8 C.F.R. § 244.14(a)(2) for failure to properly re-register her status. Specifically, there is no evidence that the Applicant sought to re-register for TPS when she applied for employment authorization in January 2020, as the record does not indicate that she filed a Form I-821 at the time, and according to the November 4, 2019, Federal Register notice she was not required to do so to extend the validity of her TPS beyond January 2020. Rather, as the Applicant had previously properly re-registered her TPS until January 5, 2020, pursuant to the USCIS guidance her TPS was automatically extended through January 2021.

The Director did not explain how the Applicant's failure to attend the biometrics appointment scheduled in connection with her stand-alone employment authorization application affected her eligibility for TPS, which she was granted in 2000 and thereafter re-registered during the requisite periods, with the most recent successful re-registration in 2018. Nor did the Director indicate that the Applicant was otherwise ineligible for TPS. *See* 8 C.F.R. § 103.3(a)(1)(i) (providing in relevant part that whenever an application is denied USCIS must explain in writing the specific reasons for denial).

Moreover, the Applicant's statements indicate that her failure to appear at the ACS for biometrics capture was unintentional because she did not receive the biometrics appointment notice, and USCIS subsequently advised her that she would receive a new appointment notice at a later time.

In view of the above, we will remand the matter to the Director to again review the Applicant's eligibility for TPS, including the decision to withdraw TPS, and to give her another opportunity to attend a biometrics capture appointment, if required.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.