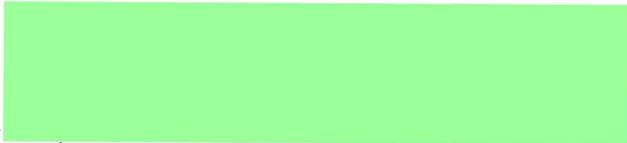


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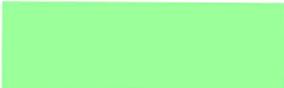


U.S. Citizenship  
and Immigration  
Services



DATE: **FEB 07 2013**

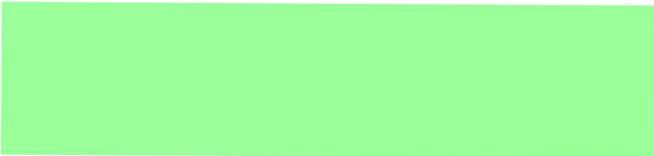
Office: VERMONT SERVICE CENTER

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 in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank, you,

Ron Rosenberg  
Acting 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 matter will be remanded for further consideration and action.

The applicant is a citizen of El Salvador 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 denied the application on December 29, 2011, after determining that the applicant was ineligible for late initial registration.

On appeal, counsel asserts that the applicant is currently in removal proceedings and is eligible for late initial registration.

The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.<sup>1</sup>

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 as designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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
- (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;

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<sup>1</sup>The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

- (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 El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until September 9, 2013, 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 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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he or she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

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

The record reflects that on September 11, 2001, the applicant filed a Form I-589, Application for Asylum and for Withholding of Removal.<sup>2</sup> The Form I-862, Notice to Appear, dated October 16, 2002, indicates that the applicant entered the United States without inspection on or about December 1, 1995. On October 17, 2002, the Form I-862 was served on the applicant. On

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<sup>2</sup> The applicant had a projected filing date of October 25, 1996, due to her mother's previous filed Form I-589.

November 13, 2002 an immigration judge ordered the applicant removed *in absentia* to El Salvador. The applicant filed her initial TPS application on August 23, 2007, under receipt [REDACTED] and indicated that she was filing a late initial registration for TPS. On February 7, 2008, the Vermont Service Center Director denied that TPS application due to abandonment (the director noted that the applicant was requested to submit evidence to establish her eligibility for late initial registration for TPS, but had failed to do so). No motion was filed from the denial of that application.<sup>3</sup>

The applicant was subsequently arrested and detained on September 2, 2011, pursuant to a January 23, 2003 Warrant of Removal, Form I-205. While the applicant was detained awaiting deportation, on September 11, 2011, she filed a motion to reopen the immigration judge's *in absentia* removal order.<sup>4</sup> The applicant then filed the current TPS application on September 12, 2011, and indicated that she was filing a late initial registration for TPS. The applicant was released and issued an Order of Supervision on September 16, 2011.

The Board of Immigration Appeals (BIA) inquiry system indicates that on December 16, 2011, a decision was issued by the immigration judge from which the applicant filed an appeal on January 17, 2012. The appeal is currently pending.

In denying the current TPS application, the director noted that the applicant had failed to establish her eligibility for late initial registration for TPS. However, the record reflects that the applicant's removal proceeding is still pending as no final decision on the applicant's appeal has been issued by the BIA. The applicant is, therefore, now eligible for late initial registration under 8 C.F.R. § 244.2(f)(2). The director's finding on this issue will be withdrawn. However, the validity period of the applicant's fingerprint check has expired.

The case will be remanded to the director for further adjudication of the application and for the purpose of sending the applicant a fingerprint notification form, and affording her the opportunity to comply with its requirements. 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.

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

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

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<sup>3</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>4</sup> See 8 C.F.R. § 1003.23(b)(4)(ii)