U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: MAY 15 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 case will be remanded for further consideration and action.

The applicant claims to be a citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

On August 22, 2012, the director denied the application because the applicant failed to establish she was eligible for late registration.

On appeal, counsel, citing 64 FR63593-01,[1] asserts that the denial of the late registration application was improper as the applicant submitted evidence in response to the Notice of Intent to Deny indicating she was an individual who possessed a "condition" that "discouraged registration during the initial registration period."

Counsel indicates at Part 2 on the appeal form that a brief and/or additional evidence would be submitted to the AAO within 30 days.[2] However, more than eight months later, no additional correspondence has been presented by counsel or the applicant. Therefore, the record must be considered complete.

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

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[1] Eligible persons who did not register for TPS because they are or were in a status or a condition that made it unnecessary or discouraged registration during the initial registration period may now apply for late registration.

[2] Every appeal submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. 8 C.F.R. § 103.2(a)(1). The Form I-290B instructs the applicant to submit a brief and additional evidence to the AAO within 30 days of filing the appeal.

(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 El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until September 9, 2013, 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 AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

USCIS records reflect:

- On January 22, 1995, the applicant attempted entry into the United States by presenting a photo-substituted and altered El Salvadoran passport. The applicant chose to voluntarily return to El Salvador. On January 23, 1995, the applicant withdrew her application for withdrawal of admission and pled political asylum.
- On February 2, 1995, a Form I-122, Notice to Applicant for Admission Detained for Hearing Before Immigration Judge, was served on the applicant, which advised of a hearing before an immigration judge on July 18, 1995. A notice revoking the applicant's parole on February 2, 1995 was served along with the Form I-122.
- On July 18, 1995, the hearing was rescheduled before an immigration judge for March 28, 1996. On March 28, 1996, a hearing was held and the alien was ordered excluded and deported *in absentia*. On April 10, 1996, an appeal and a motion to reopen were filed before the Board of Immigration Appeals (BIA). On May 22, 1997, the BIA dismissed the appeal and denied the motion.
- On March 21, 1997, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On January 21, 1999, the Form I-485 was denied as the applicant failed to appear for her scheduled interview.
- On July 31, 1997, a Form I-166, Notice to Surrender for Deportation, was sent to the applicant at her address of record advising her to report on August 19, 1997 for departure to El Salvador.
- On August 10, 2011, the applicant was arrested by Immigration and Customs Enforcement. A Form I-205, Warrant of Removal/Deportation, was issued on October 5, 2011.
- On October 11, 2011, a Form I-246, Application for Stay of Removal, was filed. The Form I-246 was approved on November 8, 2011 and valid through June 30, 2012. The applicant filed a second Form I-246 on July 6, 2012, which was denied on August 29, 2012.
- On March 9, 2012, the applicant filed her initial Form I-821, Application for Temporary Protected Status.

On July 6, 2012, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). Counsel, in response, indicated that on January 23, 1995, the applicant was paroled into the United States and, therefore, she met the criteria under 8 C.F.R. § 244.2(f)(2)(iii).

Counsel provided a declaration from the applicant, who acknowledged that on January 23, 1995, she entered the United States with a passport under a different name and was subsequently paroled into the United States. The applicant indicated that she resided with her father and step-mother for two years; that her father hired an attorney to handle her immigration case; that upon receipt of her immigration file through the Freedom of Information Act, she discovered that a Form I-485 had been filed; that the signatures on the motion before the BIA and Form I-485 did not belong to her; and that in May 1997 she became pregnant and was immediately forced to leave the home of her father and step-mother. The applicant, further stated, in pertinent part:

> After being kicked out of the house, neither my father, my step-mother, or the lawyer they hired on my behalf ever informed me of the status of my immigration case. At no point did they inform me that an adjustment of status application had been file and denied. Also, at no point did they inform me that I had a final order of removal. I knew that I had been paroled in when I entered the United States and no one ever told me that this parole had been actually revoked.

Although no proof has been submitted to support the applicant's declaration, given the age of the applicant in 1995, it is understandable that she may not have been aware that her parole had been revoked. As the applicant was released into the custody of her father and/or step-mother, the Form I-122 and the notice revoking her parole most likely would had been given to her father or step-mother. It is determined that the applicant is an eligible person who did not register for TPS because she was in a condition that made it unnecessary to register for TPS during the initial registration period. Therefore, the applicant has met the criteria for late registration under 8 C.F.R. § 244.2(f)(2)(iii). Consequently, the director's sole basis for denying the TPS application will be withdrawn.

Finally, as previously noted, on January 22, 1995, the applicant sought to procure entry into the United States by presenting an altered El Salvadoran passport. The record is clear that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willfully misrepresenting a material fact in an attempt to procure entry into the United States.

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible. Section 212(a)(6)(C)(i) of the Act.

Except as provided in clause (iii), the Secretary may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Section 244(c)(2)(A)(ii) of the Act. If an alien is admissible on grounds which may be waived, he or she shall be advised of the procedures for applying for a waiver of grounds of inadmissibility on Form I-601. 8 C.F.R. § 244.3(b)

A misrepresentation is generally material only if by it the alien received a benefit for which he/she would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10

I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72.

The case will be remanded so that the director shall provide the applicant the opportunity to file a Form I-601, Waiver of Grounds of Inadmissibility, and thereafter shall fully adjudicate the Form I-601 and the Form I-821. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS. An adverse decision on the waiver application may be appealed to the AAO.

In addition, the record reflects that the validity period of the applicant's fingerprint check has expired. Accordingly, the case will also be remanded for the purpose of sending the applicant a fingerprint notification form, and affording her the opportunity to comply with its requirements. Thereafter, the director will render a new decision. Should the decision be adverse, the director must give written notice setting forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i).

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

ORDER: The case is remanded for appropriate action and decision consistent with the foregoing.