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



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE **FEB 26 2014**

Office: VERMONT SERVICE CENTER

FILE: [Redacted]

IN RE: Applicant: [Redacted]

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

ON BEHALF OF APPLICANT:

[Redacted]

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 on appeal. The appeal will be dismissed.

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.

The director denied the application because the applicant failed to establish he was eligible for late registration.

On appeal, counsel asserts that the applicant is eligible for the benefit sought because during the initial registration and re-registration periods, he had multiple applications pending.

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.

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 March 9, 2015, 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 he 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).

On appeal, counsel asserts that, in response to the Notice to Intent to Deny, evidence was provided establishing that during the initial registration period the applicant had a pending asylum application; that the asylum application had been pending since 1992; that in August 2005, the applicant was scheduled for an asylum interview; that on or about March 21, 2008, the asylum application was denied; that a Form I-130, Petition for Alien Relative, was filed on April 30, 2001; that on November 26, 2006, the applicant filed a Form I-485, Application to Register for Permanent Resident or Adjust Status; that he was interviewed on or about September 25, 2007; that on April 23, 2008, the Form I-485 was denied; that a motion to reopen from the denial of the Form I-485 was filed; that a Form I-212, Application for Permission to Reapply for Admission, was filed on May 23, 2008; that a decision from the motion was issued on January 12, 2011; and that a decision from the Form I-212 was issued on January 12, 2012. Counsel further asserts that although a change of address was provided in March 2010, the decisions were never mailed to the applicant's correct address.

Contrary to counsel's assertions, the applicant is not eligible for the benefit sought.

The applicant filed a Form I-589, Application for Asylum and Withholding of Removal, on January 21, 1992. On March 21, 2008, the District Director, Anaheim, California, determined that the applicant was ineligible for benefits under the ABC Settlement Agreement.¹

As provided in 8 C.F.R. § 244.2(g), the applicant had a 60-day period immediately following the denial of Form I-589 to file an application for late registration in order to meet the requirements described in 8 C.F.R. § 244.2(f)(2)(ii). However, the TPS application was not filed until March 26, 2012.

Although the Form I-130 was filed during the initial registration period, it is not an application for change of status as provided in 8 C.F.R. 244.2(f)(2), and does not render the applicant eligible for late registration. As provided in 8 C.F.R. § 244.2(f)(2)(ii), a pending application for permanent residence during the initial registration period would render the applicant eligible for late initial registration. The record, however, does not contain evidence that a Form I-485 was pending during the initial registration period. USCIS records reflect that the Form I-485 was filed on November 26, 2006.

The provisions for late registration were created in order to ensure that TPS benefits were made available to individuals who did not register during the initial registration period for the various circumstances specifically identified in the regulations at 8 C.F.R. § 244.2(f)(2) and (g). The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration. Consequently, the director's decision to deny the application for TPS will be affirmed.

An alien applying for TPS has the burden of proving 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.

¹ *American Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991).