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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



U.S. Citizenship
and Immigration
Services

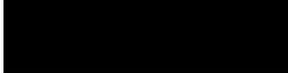
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DATE: **MAY 19 2011**

Office: FRESNO

FILE: 

IN RE: Applicant: 

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

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Fresno, California, 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.

The director denied the TPS application “based upon the facts and determination of the Board of Immigration Appeals and the reaffirmation of the Court’s findings.”

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record reflects that on December 13, 1993, the applicant filed a Form I-589, Application for Asylum and Withholding of Removal. On February 1, 1999, a Form I-862, Notice to Appear, was issued and served on the applicant. On October 1, 1999, a removal hearing was held and the applicant was removed from the United States *in absentia*. On August 9, 2010, the applicant filed a stay of removal in order to file a motion to reopen the removal proceedings. On August 11, 2010, the immigration judge granted the stay of removal for 14 days. On October 1, 2010, the immigration judge (IJ) denied the applicant’s motion to reopen and vacated its order of August 11, 2010. The applicant appealed the IJ’s decision to the Board of Immigration Appeals (BIA). On December 21, 2010, the BIA affirmed, without opinion, the IJ’s decision.

The applicant initially filed a TPS application [REDACTED] on October 22, 2001. The Director, California Service Center, denied that application due to abandonment on January 28, 2005. No motion was filed from the denial of that application.¹ The applicant filed another TPS application [REDACTED] on July 28, 2010, and indicated that he was reregistering for TPS. The applicant also filed a Form I-765, Application for Employment Authorization, on July 28, 2010, and indicated at item 15 that his current immigration status was as an approved TPS registrant. However, there is no evidence in the record to support the applicant’s claim. The re-registration application was denied on September 10, 2010.² The applicant filed the current TPS application on November 10, 2010.

The applicant filed his current TPS application subsequent to the initial registration period. Therefore, it must be determined if during the initial registration period (March 9, 2001 through September 9, 2002), the applicant fell within at least one of the provisions for late registration described in 8 C.F.R. § 244.2(f)(2)(i) through (iv). 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

¹ 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).

² An applicant is not eligible to apply for re-registration for TPS if the applicant’s initial TPS application has been denied.

the qualifying condition in order to be considered for the late initial registration. *See* 8 C.F.R. § 244.2(g).

The director, in issuing his decision, failed to address whether the applicant was ineligible for TPS based on the regulations set forth in 8 C.F.R § 244.2(f)(2). Therefore, the director's decision to deny the TPS application solely based on the decisions of the IJ and BIA will be withdrawn.

In the instant case, the TPS proceedings lies within the jurisdiction of the Vermont Service Center and, therefore, the case will be remanded to the director to determine and address whether the applicant meets the criteria for late registration eligibility. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

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 to the director for further action consistent with the above.