

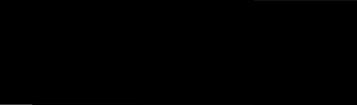
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

M1



DATE: Office: VERMONT SERVICE CENTER

OCT 17 2011

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: Self-represented

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 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.

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

On appeal, the applicant asserts that he entered the United States in November 1995, and has continuously resided in the United States since that time. The applicant asserts, in pertinent part:

After I get TPS I never skipped one renew period for TPS because i knew that it would made me lose my eligibility.

I think that you are confuse due on 08/20/2006 i sent to your office a big package container all my information since I am living here in USA, my intention wasn't to apply as require the initial period, I did that because your office didn't sent my employment authorization card for two follow TPS extension period.

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 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, 2012, 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).

The record reflects that the applicant filed a Form I-589, Application for Asylum and Withholding of Removal. On February 8, 1999, a removal hearing was held and the applicant's asylum application was denied and he was ordered removed from the United States. The applicant appealed the immigration judge's decision to the Board of Immigration Appeals (BIA).

In a notice dated April 20, 2001, the BIA informed the applicant of the TPS designation of El Salvador and that he may apply for the temporary benefits of TPS. The notice, which was in the English and Spanish languages, advised the applicant of the registration period to file a TPS application. On June 26, 2001, the BIA administratively closed the case in order to allow the applicant to apply for TPS.

The applicant submitted a TPS application, which was received at the Atlanta District Office on September 9, 2002.¹ The Atlanta District Office, however, is not the appropriate office to file a TPS application.² The TPS application was returned to the applicant with instructions to file it with the Texas Service Center, which had jurisdiction over his place of residence.

The applicant submitted a TPS application which was received at the Texas Service Center on September 27, 2002. The TPS application, however, was returned to the applicant as the required Form I-765, Application for Employment Authorization, was not submitted.³

The applicant filed his initial TPS application () on November 18, 2002. The Director, Texas Service Center, denied that application on June 27, 2003, because the applicant failed to establish his eligibility to file for late initial registration. No appeal was filed from the denial of that application.

The applicant filed another TPS application () on August 1, 2003. USCIS records reflect that the application was denied on April 6, 2006.

The applicant filed another TPS application () on January 25, 2005, and indicated that he was re-registering for TPS. On June 27, 2005, the Director, California Service Center, denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. The AAO, in dismissing the appeal on November 6, 2006, concurred with the director's finding. The AAO, upon a *de novo* review,⁴ also dismissed the appeal because the applicant failed to establish late registration eligibility.

The applicant filed the current application on August 20, 2006.

¹ The Form 3811, Domestic Return Receipt, from the U.S. Postal Service.

² See 66 Fed. Reg. 14214 (March 9, 2001) and the instructions to the Form I-821 (Rev. 04/15/02).

³ The instructions to the Form I-821 required that a Form I-765 must be filed with the Form I-821.

⁴ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

On April 26, 2007, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant, in response, provided evidence to establish his qualifying residence and physical presence in the United States.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on July 16, 2007.

As noted above, the proceedings for the asylum application were administratively closed in order for the applicant to apply for TPS. Administrative closing of a case does not result in a final order. It is merely an administrative convenience which allows the removal of cases from the calendar in appropriate situations. *See Matter of Gutierrez-Lopez*, 21 I&N Dec. 479 (BIA 1996). It is concluded that the applicant's asylum application is still pending and, therefore, he qualifies for late initial registration on this basis. Therefore, the sole basis for the decision of the director will be withdrawn.

The case will be remanded to the director for further adjudication of the application. 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.

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