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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



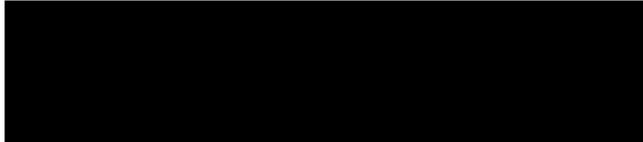
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DATE: Office: VERMONT SERVICE CENTER FILE: 

JUL 05 2012

IN RE: Applicant: 

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

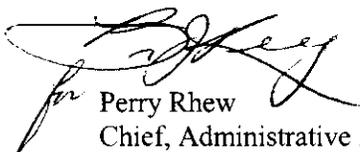
ON BEHALF OF APPLICANT:


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,


for 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 appeal is 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 TPS registration.

On appeal, counsel asserts that the applicant is eligible for late registration because he is a derivative on an asylum application that his mother filed in June 1993, and that application has never been adjudicated. Counsel further asserts that the director erroneously denied the application for TPS because the applicant could not have filed an application for late registration within a 60-day period following the withdrawal of his asylum application since the designated period for TPS for El Salvadorans ended in 1992.

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 Temporary Protected Status 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.

The term *continuously physically present*, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The term *continuously resided*, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

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. The designation of TPS for El Salvadorans has been extended several times, 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 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. 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). 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).

El Salvador was designated for TPS in 1991, pursuant to section 303 of the Immigration Act of 1990 (Public Law 101-649, dated November 29, 1990), for an 18-month period beginning on January 1, 1991, and ending on June 30, 1992. The 1991 designation of TPS for El Salvador terminated on June 30, 1992, and is unrelated to the current TPS designation for El Salvador (hereinafter current designation) that was announced on March 9, 2001.

The current designation of TPS for El Salvador has been extended several times, with the latest extension valid until September 9, 2013.

In order to be granted TPS, an applicant must meet all of the requirements of 8 C.F.R. § 244.2 as outlined above, including meeting the nationality, residence, and admissibility criteria. In addition, the applicant must file the TPS application within the initial registration period unless he or she is eligible for late registration. 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.

The record reflects that the applicant was a derivative on his mother's asylum application which was filed on June 11, 1991. The asylum application was withdrawn on January 6, 1992. On that same date, an Immigration Judge granted the applicant voluntary departure until August 6, 1992. No appeal was filed from the decision of the Immigration Judge.

The issue in this proceeding is whether the applicant is eligible for late registration for TPS under the current designation for El Salvador.

The record reflects that the applicant filed his first TPS application under the current designation on September 19, 2003 under receipt number [REDACTED]. The registration period for the current designation was from March 9, 2001 to September 9, 2002. The Director, California Service Center, denied that application on March 18, 2004 because the applicant had failed to register in a timely manner. The applicant did not appeal the director's decision.

The applicant filed a second TPS application under the current designation on March 2, 2012 under receipt [REDACTED]. The Director, Vermont Service Center, denied this TPS application on April 19, 2012. The director stated in his decision that although the applicant had been a derivative on his mother's Form I-589, Application of Asylum and Withholding of Removal, the mother withdrew the asylum application on January 6, 1992, the Immigration Judge ordered voluntary departure until August 6, 1992, and the applicant "did not file for TPS within 60 days of the termination of that qualifying condition to be qualified for late initial registration." The director stated further that the applicant had been informed of USCIS's reasons for denial on March 18, 2004, (referring to the application filed on September 19, 2003) and he had not provided any new and compelling evidence that overcame the reason for denial of the initial TPS application.

On appeal, counsel asserts that the applicant could not have filed a TPS application within the 60-day period following the expiration or termination of the qualifying condition that expired on August 6, 1992, because the applicant could not have applied for relief during a period when that relief had ended.

Counsel is correct in that the applicant could not have filed a TPS application within the 60-day period following the expiration or termination of the qualifying condition as TPS for El Salvador under the 1991 designation had terminated on June 30, 1992. Therefore, the director's finding on this issue is withdrawn.

On appeal, counsel asserts that, "[a]ll (f)(2)(i) requires is that the applicant has to be granted voluntary departure, nothing more" and the applicant is, therefore, eligible for late initial filing. Counsel's assertion is without merit. The record of proceeding contains a copy of a Form I-210, Voluntary Departure Notice, reflecting that on January 6, 1992, the Immigration Judge granted the applicant voluntary departure from the United States on or before August 6, 1992, with an alternate order of deportation if the applicant should fail to depart as required. There is no evidence in the record that the applicant departed from the United States as required. As the prior grant of voluntary departure expired on August 6, 1992, the applicant did not have an application for voluntary departure or any relief from removal pending or subject to further review or appeal, during the initial registration period of March 9, 2001 through September 9, 2002 and, therefore, he cannot meet the requirements of (f)(2)(i) or (ii) above.

Counsel further asserts that the director was incorrect in relying on the withdrawal of the asylum claim as the basis for denial as the asylum application for the applicant's mother was "apparently" re-submitted and honored by USCIS as evidenced by the work authorization documents issued to the applicant as late as 2001.

Counsel provides a copy of pages one and two of a Form I-589, Application for Asylum and Withholding of Removal, for the applicant's mother, [REDACTED]. In addition, counsel provides a copy of a Declaration of Applicant [REDACTED] outlining the reasons that she was requesting asylum in the United States. The declaration is signed by [REDACTED] and bears a date of June 8, 1993. In response to the question in Part B, Block 16, "If in the U.S. are your spouse/children included in your request for asylum?" the applicant's mother indicated "No". Therefore, contrary to counsel's assertion, the record does not contain evidence to establish that the applicant had an asylum application pending during the initial registration period.

Counsel states that the applicant continued to receive employment authorization cards under category C08, as an asylum applicant through 2001. The record contains copies of Form(s) 797C, acknowledging receipt of the applicant's Form(s) I-765, Application for Employment Authorization, which were received on September 28, 1998, February 16, 2000, and March 12, 2001, respectively. Each Form I-797C indicates "Class requested: C08". In addition, the applicant furnished a copy of only one employment authorization card, valid for the period from February 11, 1999 to February 10, 2000 under category C08, which would appear to have been issued in connection with his Form I-765 request received on September 28, 1998.

The fact that the applicant was erroneously issued employment authorization documents through 2001 is not evidence that the applicant had an asylum case pending. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the record contains an August 19, 2003, letter from the applicant, submitted with his first TPS application filed under the current designation, in which he states that he was applying for TPS "because prior to this I was included in the political asylum case of my mother ... but due to the fact that I reached the legal age of 21 I was left out of my mother's case." Thus, it appears that the applicant was aware that he was not included in any asylum application filed by his mother, other than the one filed in 1991.

In this case, the record indicates that the applicant's asylum application was withdrawn on January 6, 1992, and the record does not contain evidence that the applicant had a new application for asylum pending during the initial registration period for the current designation. Therefore, the applicant has not demonstrated that he is eligible for TPS under the late initial registration provisions of the TPS regulations.

The provisions for late registration were created in order to ensure that TPS benefits were made available to aliens who did not register during the initial registration period (March 9, 2001, through September 9, 2002) for the various circumstances specifically identified in the regulations. The applicant has not submitted evidence that he has met any of those provisions outlined in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration 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.

It is noted that the record contains a copy of Form I-205, Warrant of Removal/Deportation, dated September 23, 1997.

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 appeal is dismissed.