



U.S. Citizenship
and Immigration
Services

[REDACTED]

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DATE: NOV 28 2012 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:

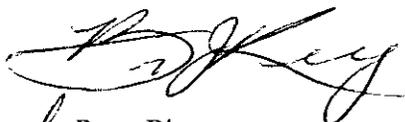
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INSTRUCTIONS:

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,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and motion to reconsider. The motion 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 that she was eligible for late registration

Based upon a *de novo* review of the record of proceedings, the AAO concurred with the director's decision that the applicant failed to establish eligibility for late registration and dismissed the appeal on March 6, 2012.¹

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;

¹ 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).

- (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.

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

A motion to reconsider must state the reason for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy ... [and] must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion, counsel for the applicant repeats his prior assertion that the applicant is eligible for late registration because she had a pending asylum application at the time she filed her first TPS application on March 29, 2009. Counsel also asserts that the applicant was a class member under the settlement agreement in *American Baptist Churches, et al. v. Thornburgh (ABC)* because her first asylum application was filed on March 28, 1988. Counsel contends that the applicant's ABC class membership renders her eligible for TPS as a late initial registrant on account of her asylum applications.

The AAO notes that while an applicant's pending asylum application may render him or her eligible for late registration, the regulation at 8. C.F.R. § 244(g) also requires that a late registration be filed within a 60-day period immediately following the expiration or termination of the conditions described in 8 C.F.R. § 244.2(F)(2).

In this case, the record shows that counsel's assertions on motion are erroneous and not supported by facts, case law or Service policy. Counsel admitted that the applicant's 1995 asylum application was denied by the asylum office on January 31, 2008; however, counsel contends that the director should have referred the asylum denial to immigration court for further

adjudication and that since an immigration judge has not rendered a decision on the 1995, asylum application, that the applicant is eligible to seek TPS as a late initial registrant because “she currently has an application for relief pending adjudication.” Contrary to counsel’s assertion, the record shows that the applicant was placed in removal proceeding in 1988 based on her 1988 asylum application. The asylum application was denied by an immigration judge and the applicant was granted Voluntary Departure from the United States. The judge further ordered that “if [the applicant] fails to depart when and as required, the privilege of voluntary departure shall be withdrawn without further notice or proceedings, and the following order shall thereupon become immediately effective. The [applicant] shall be deported from the United States to El Salvador . . .” The record shows that the applicant failed to depart the United States within the period specified in the voluntary departure order, and the order reverted to a deportation order as specified in the June 3, 1988 order by the immigration judge. Therefore, the applicant already had an outstanding final order of deportation from the immigration court and there was no need for the asylum office to refer the applicant back to the immigration court. This fact was communicated to the applicant on January 31, 2008, by the Director, Los Angeles Asylum Office, when the director denied her asylum application on the same date. The director specifically notified the applicant that the 1988 removal order may be enforced against her and that she may be removed from the United States without any further proceedings.

As to counsel’s claim that the applicant is eligible for late registration as an ABC class member, the record shows that on June 29, 2004, the applicant filed an Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 Of Public Law 105-100 NACARA)), Form I-881, as an ABC member. The application was denied by the Director, Los Angeles Asylum Office, on January 29, 2005 on the basis that the applicant has an outstanding order of deportation. In the decision, the director indicated that “ an individual with an outstanding final order is not eligible to file for a NACARA application. . . if [the applicant] have not been granted asylum, the previous order of deportation or removal may be enforced against [the applicant] and [the applicant] may be removed from the United States.” As the record clearly shows, the applicant was aware at the time that she first attempted to file her TPS application in December 2008, and was rejected, that she had no pending application or petition that would have rendered her eligible for late registration.

The applicant failed to file her TPS application within 60-days of the denial of her asylum application on January 31, 2008. Accordingly, the applicant has failed to establish that she is eligible for late registration. The AAO’s previous decision on March 6, 2012 will not be disturbed. The application remains denied.

ORDER: The motion is dismissed. The previous decision of the AAO dated March 6, 2012, is affirmed.