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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

[Redacted]

DATE:  
**APR 30 2013**

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 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,

Ron Rosenberg  
Acting 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 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 late registration as his asylum application continues to be pending as administrative closure is not a final decision.

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 parole; or

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- (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 September 9, 2013, 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. The applicant filed the current TPS application on September 8, 2010 and indicated that he was filing a late initial registration for TPS.

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).

USCIS records reflect that the applicant entered without inspection near San Ysidro, California on or about October 22, 1993. On October 25, 1993, a Form I-221, Order to Show Cause and Notice of Hearing, was issued. On September 22, 1994, the applicant filed a Form I-589, Application for Asylum and Withholding of Removal. On October 28, 1994, a notice was sent to the applicant at his address of record informing him that the processing of the Form I-589 filed at the Anaheim Asylum Office (California) had been terminated because said office had no jurisdiction as he was under deportation or exclusion proceedings. The applicant was advised to file his Form I-589 before the Immigration Judge having jurisdiction over his place of residence after he was calendared for a deportation or exclusion hearing. There is no indication in the record of proceeding or USCIS database that the applicant was calendared for a deportation or exclusion hearing or that the applicant filed a Form I-589 before the immigration court.

Consequently, the applicant did not have an application for asylum that was pending during the initial registration period.

Administrative closure of a case is used to temporarily remove a case from Immigration Judge's calendar or from the Board of Immigration Appeal's docket. 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. *Matter of Gutierrez-Lopez*, 21 I&N Dec. 479 (BIA 1996). However, there is no evidence in the record that either an Immigration Judge (IJ) or the Board of Immigration Appeals (BIA) administratively closed the applicant's case. In the instant case, the Form I-589 was terminated by the Anaheim Asylum office with instructions to re-file said application before the immigration court having jurisdiction. The USCIS internal database system cited in the director's decision, which listed the procedure as "ADM CLOSED – IJ JURISDICTION," is not the same procedure used by the IJ or the BIA.

As noted by the director, in his decision to deny the TPS application, the applicant's marriage to his TPS registrant spouse on April 4, 2009, does not render him eligible for late registration under 8 C.F.R. § 244.2(f)(2)(iv) as the marriage occurred subsequent to the initial registration period.

It is noted that in the instant case, the issue of filing a TPS application within a 60-day period immediately following the expiration or termination of conditions described in 8 C.F.R. § 244.2(f)(2) is moot as neither the old 1991 designation<sup>1</sup> nor the new 2001 designation for El Salvador was in effect at the time of the termination of the applicant's Form I-589.

It is also noted that the record reflects that the applicant obtained employment authorization under category C08 from April 10, 1997 through May 13, 2004. However, the fact that the applicant was erroneously issued employment authorization is not evidence that the applicant's asylum case was still pending. If employment authorizations were approved without reviewing all the contents in the record, the approvals would constitute material and gross error on the part of the service center. The AAO is not required to approve applications 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 or any agency 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).

The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). 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.

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<sup>1</sup> The TPS designation terminated on June 30, 1992.