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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

DATE: **MAY 09 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:

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,

A handwritten signature in black ink, appearing to read "Ron M. Rosenberg".  
Ron M. 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 on February 24, 2012, because the applicant had failed to establish that he was eligible for late initial registration.

On appeal, counsel contends that the applicant is eligible for late registration because he qualifies as the son of a TPS eligible parent when his father added his name on the father's asylum application during the initial TPS registration period in 2001.

On appeal, counsel asserts that the applicant has established his eligibility for late initial registration and that the director's decision to deny his application "is completely unfounded." Counsel contends that the applicant is eligible for late registration, as a child of an alien who was eligible for TPS during the initial registration period. Counsel asserts that the applicant did not understand that he should apply for TPS since he had work authorization from the derivative asylum application and did not think he had to apply for another program. Counsel cites *Matter of N-C-M-*, 25 I&N Dec. 535 (BIA 2011) as the legal basis for the applicant's eligibility for late initial registration. Counsel also submits a brief and additional evidence.

The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.<sup>1</sup>

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 as designated by the Attorney General, now the Secretary, Department of Homeland Security (Secretary), is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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;

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<sup>1</sup>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).

- (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.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he or she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

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 United States 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).

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 record reflects that the applicant filed his initial TPS application on August 25, 2011. On December 15, 2011, the director issued a notice of intent to deny (NOID) requesting that the applicant submit evidence to establish his eligibility for late initial registration for TPS. The director requested the applicant to submit evidence of his father's TPS registration to qualify as a child.

In response, counsel submits a letter contending that the regulations do not require that an applicant's parent actually apply for TPS, only that the parent be eligible to be a TPS registrant. Counsel cited 8 C.F.R. § 244.2(f)(2)(iv) and *Matter of N-C-M, id.*, in support of his contention. In his denial, the director noted that while the applicant qualified as a child of a TPS registrant, the applicant failed to file his TPS application within 60 days from the date his father's eligibility for TPS expired/terminated, when his father's asylum application was "Admin Closed-Withdrawn." The record reflects that the applicant's father had a pending asylum application at the time the applicant was added as a dependent on his father's asylum application on February 12, 2001. The applicant's father was granted lawful permanent resident in 2001 and on September 12, 2006, his asylum application was administratively closed because he had withdrawn his asylum application based on a grant of lawful permanent residence.

The issue in this proceeding is whether the applicant has established his eligibility for late initial registration.

In *Matter of N-C-M-*, the BIA held that in order to qualify for late filing, a TPS applicant filing as the "child of an alien currently eligible to be a TPS registrant" must establish only that he or she qualified as "child" as that term is defined in section 101(b)(1) of the Act, at the time of the initial registration period for his or her TPS country, not at the time the applicant actually filed. In reaching its conclusion, the BIA determined that the 60-day period after termination rule in 8 C.F.R. § 244.2(f)(2)(g) does not apply to the parent/child relationship exception in 8 C.F.R. § 244.2(f)(2)(iv).

USCIS has further determined that in applying the *Matter of N-C-M-* ruling, an individual will be considered eligible to submit a late registration application during any extension of TPS for his or her own country pursuant to 8 C.F.R. § 244.2(f)(2)(iv) if that individual *at any point during an initial registration period* met the definition of a child of an individual who is *currently* eligible to be a TPS registrant. (emphasis added).

In this case, the record reflects that the applicant was a child during the initial registration period because he was added to his father's asylum application as a dependent minor and the applicant's father was *currently* eligible to be a TPS registrant at that time because of his pending asylum application. However, on September 12, 2006, the applicant's father withdrew his asylum application. Therefore, at the time the applicant filed his asylum application in 2011, his father was no longer *currently* eligible to be a TPS registrant.

The AAO notes that while the applicant has established that he qualified as a child at the time on the initial TPS registration period, he has failed to establish that he is eligible for late TPS registration because his father (a) does not have TPS now and is maintaining TPS as required, or (b) has filed for TPS and the application is approvable – requirements under *Matter of N-C-M-*, *id.* Therefore, counsel’s contention that the applicant is eligible for late TPS registration because the applicant only need to show that his father was an “eligible TPS registrant” at the time of the initial registration period is without merit. The AAO is bound by the clear language of the regulation and statute and lacks the authority to change them.

Therefore, the applicant does not meet an exception for late initial registration as the child of a currently eligible TPS registrant under the provisions of 8 C.F.R. § 244.2(f)(2). Therefore, the finding of the director that the applicant had failed to establish eligibility for late registration will be affirmed.

An alien applying for temporary protected status 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.