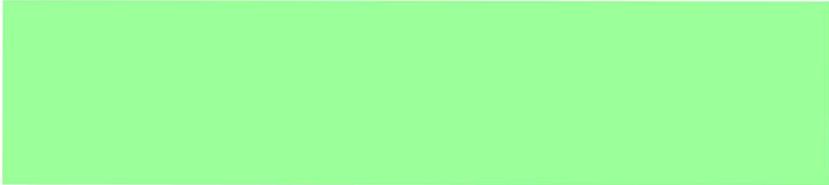




U.S. Citizenship
and Immigration
Services

(b)(6)



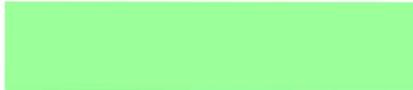
DATE: **JUN 25 2014**

Office: CALIFORNIA SERVICE CENTER

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. A motion to reopen and a motion to reconsider was filed by the applicant, which was affirmed by the Director, California Service Center. The applicant has appealed the director's decision and the matter is now before the Administrative Appeals Office (AAO) on review. 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 applicant submitted an initial Form I-821, Application for Temporary Protected Status (TPS), on March 11, 2002, under receipt number [REDACTED] and was assigned alien registration number [REDACTED]. The application was prepared by [REDACTED]. On May 26, 2004, a Request for Evidence (RFE) was issued and sent to the applicant's address of record. There is no evidence in the record that the RFE was returned as undeliverable. The Director, Texas Service Center, denied that application for abandonment on September 1, 2004, because the applicant failed to respond to the May 26, 2006 request to submit evidence of a photo-identification or any other national identity document from his country of origin. 8 C.F.R. § 103.2(b)(13). On November 7, 2013, the applicant filed a motion to reopen and a motion to reconsider from the denial of the decision of September 1, 2004.¹ The applicant through counsel asserted, in part, "because of a number of missteps involving notaries, serious indications of ineffective assistance of counsel, and limited English proficiencies and familiarity with the immigration application system [the applicant] has been unable to obtain long-sought TPS relief." The applicant claimed that he was not aware that a change of address was required each time he moved.² On March 5, 2014, the Director, California Service Center, dismissed the motion as it was determined that the evidence submitted on motion was not sufficient to reopen the decision of September 1, 2004.

The applicant filed another Form I-821 ([REDACTED]) on May 9, 2005 and indicated that he was re-registering for TPS or renewal of temporary treatment benefits. The application was prepared by [REDACTED]. The applicant was assigned alien registration number [REDACTED]. The Director, California Service Center, categorized the application as a late initial registration⁴ and issued a Notice of Intent to Deny (NOID) on February 21, 2006, which requested the applicant to submit evidence of late registration eligibility. The director denied that application on July 8, 2006, after determining that the applicant had failed to respond to the NOID

¹ A denial due to abandonment may not be appealed, but an applicant may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

² The regulation at 8 C.F.R. § 265.1 states in pertinent part, "[e]xcept for those exempted by section 263(b) of the Act, all aliens in the United States required to register under section 262 of the Act must report each change of address and new address within 10 days of such change in accordance with instructions provided by USCIS.

³ All the documents from [REDACTED] have been consolidated into [REDACTED]

⁴ Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

and failed to establish that he was eligible for late initial registration for TPS.⁵ No appeal was filed from the denial of that application.

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.

On appeal, counsel provides unpublished AAO decisions to support his assertion that USCIS should exercise its *sua sponte* power to grant the applicant's motion.

While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions have no such precedential value. The AAO conducts appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012). The AAO will review the present matter based on the evidence of record, applicable law and precedent decisions.

On appeal, counsel requests that the initial Form I-821 be reconsidered and approved as the applicant was given ineffective assistance. Counsel asserts that the initial TPS application was prepared and filed by notario Mr. [REDACTED]. Counsel asserts, in pertinent part:

It is Mr. [REDACTED] assistance in preparing the original application that is the subject of Applicant's claim of ineffective assistance. However, notario [REDACTED] and Counsel [REDACTED] provided legal assistance to [the applicant] starting around 2005 and 2007 respectively. While these two providers did not prepare [the applicant's] original TPS application, their own, separate ineffective assistance, including inter alia failing to realize the deficiency and denial of the original TPS application, prevented [the applicant] from addressing the errors in his original TPS application and caused reasonable delay in the filing of his motion to reopen before the Service Center.

⁵ The director noted that the NOID had been mailed to the applicant's last known mailing address and had not been returned by the U.S. Postal Service as undeliverable.

Counsel states that, to date, [REDACTED] has not responded to the applicant's claims of ineffective assistance.

Counsel submits a letter from [REDACTED] who acknowledges that [REDACTED] assisted the applicant in filling out his TPS application in 2005. Ms. [REDACTED] indicates, "[w]e are a notary service; we are not attorneys and we are therefore not able to provide our clients with any sort of legal advice." Ms. [REDACTED] further denies that [REDACTED] ever provided the applicant with any inaccurate information, misrepresentation, or that it failed in its duties in filling out the forms; that any form of paperwork prepared is handed directly to each client and he/she is responsible for mailing of said process, updating their mailing address and keeping track of their correspondence; and that if the applicant questioned the quality of its services, he "would have returned to our office, or at least called, soon after his process started, and not contact us 8-9 years later in the form of a letter."

Counsel also submits a letter from [REDACTED] who acknowledges that the applicant had retained the services of his office on or about May 25, 2007. Mr. [REDACTED] indicates that his office "successfully argued and had the applicant's case REOPENED and his deportation was vacated" and that the applicant was given a chance to apply for TPS before the immigration judge. Mr. [REDACTED] further indicates that the applicant was "missing in action most of the time, phone numbers did not work, addresses were changed without notice to us or immigration."

Although counsel notes that the applicant was not assisted by an attorney but by a notary in 2002, there is no remedy available for an individual who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on his behalf. See 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance against accredited representatives. Cf. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel). As previously cited in the decision of the director dated March 5, 2014, "preparers of immigration applications and petitions cannot give legal advice. Their service is limited to helping their customers complete applications and petitions for immigration benefits." Further, ineffective assistance has not been shown on the behalf of Mr. [REDACTED] and Ms. [REDACTED]. Specifically, the adverse decision in the initial TPS application had been issued ten months before [REDACTED] prepared the second TPS application, and more than two years had passed before counsel's office represented the applicant in his deportation proceedings.

Contrary to counsel's assertion, the RFE was material to eligibility in that it requested the applicant to submit evidence to establish his identity and nationality. Although the applicant provided a copy of his birth certificate,⁶ it alone does not establish nationality. The birth certificate was not accompanied by either the required photo identification or national identity document. 8 C.F.R. §§ 244.2(a) and 244.9(a)(1).

⁶ The required English translation was not included.

The regulation at 8 C.F.R. § 244.9(c) – *Failure to timely respond* – provides as follows:

Failure to timely respond to a request for information . . . without good cause, will be deemed an abandonment of the application and will result in a denial of the application for lack of prosecution. *Such failure shall be excused if the request for information . . . was not mailed to the applicant's most recent address provided to the Service.*

[Emphasis added.]

There is no basis to conclude that the Director, Texas Service Center, erroneously mailed the notices of May 26, 2004 and September 1, 2004 to a wrong address, or that the director's decision to deny the initial TPS application on the ground of abandonment was faulty. Accordingly, the AAO concurs with the decision of September 1, 2004.

The applicant had not established good cause for failure to respond to the notices of May 26, 2004 and September 1, 2004. Consequently, the director's decision of March 5, 2014 will be affirmed.

While not the basis for the dismissal of the appeal, it is noted that in 2008, during the removal proceedings, the applicant was provided the opportunity to file Form I-821 to renew TPS. At the applicant's removal hearing on July 14, 2009, the immigration judge denied the TPS application and ordered the applicant removed from the United States.⁷ Regarding the notices that were sent to the applicant in 2004 at [REDACTED] the oral decision of the immigration judge indicates, in pertinent part:

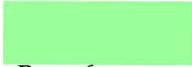
The request for evidence was mailed to that address. Respondent testified that he lived in several different apartments in that complex and he had in fact lived in that apartment at one time. Respondent offered no evidence or allegation that he ever notified the Government that he had changed his address. Respondent offered no other explanation for his failure to respond.

The oral decision indicates that the applicant had not established that he has good cause for his failure to respond, in view of the fact that the RFE was sent to the address the applicant had provided on his TPS application and he did not claim to have provided any change of address. (I.J. at 6). The oral decision also indicates that the applicant was ineligible for TPS because of his misdemeanor convictions.⁸ Section 244(c)(2)(B)(i) of the Act.

⁷ On June 6, 2011, the Board of Immigration Appeals dismissed the applicant's appeal. On September 20, 2011, the United States Court of Appeals for the Fifth Circuit dismissed the petition for review.

⁸ October 2003 for retail theft; September 2007 for driving without a license; and December 2007 for driving without a license.

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NON-PRECEDENT DECISION

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.