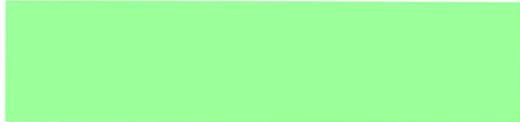


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



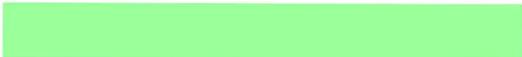
U.S. Citizenship
and Immigration
Services



DATE: NOV 13 2014

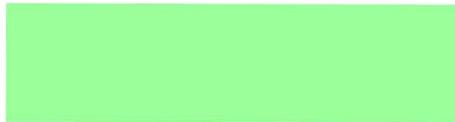
Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Applicant: 

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

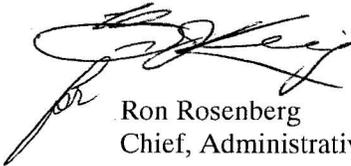
ON BEHALF OF APPLICANT:



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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
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 case will be remanded for further action and consideration.

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. On May 30, 2012, the director denied the application because the applicant failed to establish he was eligible for late registration.

On appeal, the applicant through counsel asserts that his application for adjustment of status was still pending at the time the Board of Immigration Appeals issued its decision in 2005.

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 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.

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 El 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 March 9, 2015, 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. If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

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. See *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). We consider all pertinent evidence in the record, including new evidence properly submitted upon appeal.

The record reflects the following:

- A deportation hearing was held on August 23, 1988 and the applicant was ordered deported from the United States. A Form I-205, Warrant of Deportation, indicates that the applicant was deported on August 24, 1988.
- On April 30, 1993, a Form I-130, Petition for Alien Relative, was filed on behalf of the applicant. Said petition was approved on May 17, 1993.
- On September 25, 1997, the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status. The applicant maintained employment authorization under category C-09 through January 17, 2006.

- The applicant filed his initial TPS application [REDACTED] on August 21, 2001. On October 21, 2002, the Director, California Service Center, denied that application due to abandonment.¹ No motion was filed from the denial of that application.²
- The applicant filed a re-registration application for TPS ([REDACTED]) on November 14, 2002. On March 3, 2004, the Director, California Service Center, denied that application because the initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.
- A removal hearing was held on September 19, 2003, and the Immigration Judge (IJ) ordered the application for waiver under section 212(h) of the Act and the application for adjustment of status under section 245(i) of the Act be denied. The applicant was ordered removed from the United States.
- The applicant filed a re-registration application for TPS [REDACTED] on September 26, 2003. USCIS records do not reflect that a final decision has been issued for that application.
- On October 7, 2003, the applicant appealed the IJ's decision before the Board of Immigration Appeals (BIA). On January 25, 2005, the BIA dismissed the appeal.
- On March 7, 2005, a re-registration application for TPS ([REDACTED]) was submitted, which was rejected on May 11, 2005 due to incorrect or no fee.
- The applicant filed a re-registration application for TPS ([REDACTED]) on May 25, 2005. On September 1, 2005, the Director, California Service Center, denied that application because the initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.
- On August 15, 2005, the applicant filed a petition for review before the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit). On May 9, 2008, the Ninth Circuit remanded the case to the BIA for consideration of the applicant's criminal conviction. A stay of removal was ordered pending the BIA's decision. On September 19, 2008, the BIA vacated its decision of January 25, 2005 and remanded the case to the immigration court for consideration of the applicant's application for adjustment of status under section 245 of the Act.
- Removal proceedings were held and the IJ ordered the applicant removed *in absentia* on December 18, 2008.³ On August 26, 2010, the applicant filed a motion to reopen and rescind the order of December 18, 2008.⁴ On February 19, 2010, the IJ granted the motion to reopen.

¹ The applicant failed to respond to a notice requesting him to submit certified copies of court documents relating to his arrests in 2000 and 2001, as well as evidence establishing continuous residence in the United States since February 13, 2001.

² 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).

³ The IJ's order was amended on October 28, 2009 to include a designated country of removal (El Salvador).

⁴ In his motion, the applicant indicated that he did not receive notice from the immigration court informing him of a hearing on December 18, 2008. 8 C.F.R. § 1003.23(b)(4)(ii).

- A motion to terminate removal proceedings in order to reinstate prior deportation order was filed on November 5, 2010 by the Department of Homeland Security (DHS). On February 28, 2011, the IJ granted the DHS's motion to effectuate the previously issued deportation order. On March 8, 2011, the applicant appealed the IJ's decision before BIA. On April 13, 2013, the BIA dismissed the appeal.
- On April 11, 2011 a re-registration application for TPS ([REDACTED]) was submitted, which was rejected on April 28, 2011.
- The applicant filed the current TPS application on June 8, 2011.

The record of proceedings does not support the director's finding. The applicant is eligible for late registration under 8 C.F.R. § 244.2(f)(2)(ii) as he had an application for adjustment of status pending during the initial registration period, and at the time of the director's decision of May 30, 2012, his appeal before the BIA was pending. Therefore, the director's decision to deny the application for failure to establish late registration eligibility will be withdrawn.

The case will be remanded for further adjudication of the TPS application. The director may request any additional evidence that he considers pertinent to assist with the determination of the applicant's eligibility for TPS. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

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 director's decision is withdrawn. The case is remanded for appropriate action consistent with the above.