



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **APR 02 2015** 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 (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 for Temporary Protected Status was denied by the Director, Vermont Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is 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. § 1254a. On December 31, 2013, the director denied the re-registration application because the applicant's initial TPS application ( ) had been denied on March 3, 2003, and therefore the applicant was not eligible to apply for re-registration for TPS.

The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen or a motion to reconsider within 33 days. This statement was incorrect, as a denial of a re-registration application may be appealed. 8 C.F.R. § 244.10.

On appeal, citing *Matter of Barrientos*, 24 I&N Dec. 100 (BIA 2007), counsel asserts that the Board of Immigration Appeals (BIA) has the power to review, de novo, a TPS denial. Counsel also contends that, as documentation of the applicant's eligibility for TPS was filed with the immigration court, and the court then administratively closed the applicant's case due to a finding of TPS eligibility, USCIS cannot overturn the court's finding on this matter.

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 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;
- (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;
  - (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
  - (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.

The term *continuously physically present*, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section. *Id.*

The term *continuously resided*, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien. *Id.*

Persons applying for TPS offered to 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, 2016, upon the applicant's re-registration during the requisite time period.

To meet the initial registration requirements in 8 C.F.R. § 244.2(f)(1), Salvadoran applicants must have filed TPS applications during the initial registration period, March 9, 2001 through September 9, 2002. If applicants did not file their initial TPS applications during this time period, they must meet the late registration requirements as stated above in 8 C.F.R. §§ 244.2(f)(2) and (g). Specifically, to qualify for late registration, the applicant must provide evidence that during the initial registration period (March 9, 2001 through September 9, 2002) the applicant 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. 8 C.F.R. § 244.9(b). To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. *Id.*

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The record reflects the following:

- The applicant filed her initial Form I-821, Application for Temporary Protected Status, ( ) on May 7, 2001. On May 3, 2003, the Director, California Service Center, denied the application as the applicant had not established her continuous residence and continuous physical presence in the United States during the requisite time periods. On February 1, 2005, the applicant filed an untimely motion to reopen.
- On February 1, 2005, the applicant also filed a second TPS application ( ) and indicated at Part 1.b. that she was re-registering for TPS or renewal of temporary treatment benefits. On July 27, 2005, the director determined that the applicant was not eligible for the benefit sought as her initial TPS application had been denied, and there was no TPS application pending. A timely appeal was dismissed by this office on October 2, 2007, as we determined that the applicant had also not demonstrated late registration eligibility.
- While the appeal from the denial of the second TPS application was pending, the applicant filed a Form I-589, Application for Asylum and Withholding of Removal, on November 22, 2005. The applicant was granted employment authorization (under category C11)<sup>1</sup> valid from December 20, 2006 through September 30, 2007. With no opposition from Immigration and Customs Enforcement and the trial attorney, on April 19, 2007, the immigration judge administratively closed the proceedings because the applicant had a pending application for TPS.<sup>2</sup> The

<sup>1</sup> An alien paroled into the United States temporarily for emergency reasons or reasons deemed strictly in the public interest pursuant to 8 C.F.R. § 212.5. 8 C.F.R. § 274.12a(c)(11).

<sup>2</sup> Administrative closure of a case is used to temporarily remove the case from an immigration judge's calendar or from the BIA's docket. A case may not be administratively closed if opposed by either of the

applicant also filed a third TPS application ( [REDACTED] ) and was granted employment authorization (under category C19)<sup>3</sup> valid from December 20, 2006 through September 30, 2007.

- The applicant filed TPS applications on October 14, 2007 ( [REDACTED] ), March 4 2009 ( [REDACTED] ) and on March 18, 2013 ( [REDACTED] ) and indicated at Part 1.b. that she was re-registering for TPS or renewal of temporary treatment benefits. Each application was administratively closed because the initial TPS application had been denied and the applicant was not eligible to re-register for TPS.
- The applicant filed the current TPS application on July 30, 2013, and indicated at Part 1.b. that she was re-registering for TPS or renewal of temporary treatment.

Along with the current TPS application, counsel for the applicant submitted a statement indicating that the immigration judge had administratively closed the proceedings on April 19, 2007 based on the TPS approval, stating that apparently, USCIS has ignored the order of immigration judge.

We have reviewed counsel's brief on appeal and the authority cited therein. We affirm the director's finding that the present TPS re-registration application cannot be approved because the applicant never met the initial registration requirements under 8 C.F.R. § 244.2(f)(1), as she was never granted TPS. As stated above, USCIS did not approve any of the applicant's TPS applications. Furthermore, contrary to counsel's assertions, although the applicant's removal proceedings were administratively closed, the record does not reflect that an immigration judge granted the applicant TPS. Instead, the record indicates that during the applicant's removal proceedings, the applicant demonstrated she had filed a TPS application with USCIS, and that proceedings were administratively closed based on the applicant's pending TPS application, and not based on a TPS approval.

Perhaps counsel incorrectly attributes the granting of employment authorization as approval of the applicant's TPS application. Based upon filing of the Form I-821 application for TPS, an applicant is afforded temporary treatment benefits and is issued employment authorization upon establishing *prima facie* eligibility for TPS pursuant to 8 C.F.R. § 244.5(b). As provided in 8 C.F.R. § 244.13(a), temporary treatment benefits terminate upon a final determination with respect to the alien's eligibility for TPS.

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parties. 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) (internal citations omitted).

<sup>3</sup> An alien applying for TPS. 8 C.F.R. § 274.12a(c)(19).

The re-registration period is limited to individuals: 1) who have previously registered for TPS under the designation of El Salvador and whose applications have been granted; or 2) who have not previously applied for TPS and meet at least one of the criteria under the late initial registration provisions described in 8 C.F.R. § 244.2(f)(2), as well as all other TPS eligibility criteria. Extension of the Designation of El Salvador for Temporary Protected Status, 80 Fed. Reg. 4 (Jan. 7, 2015).

At the time the current TPS application was filed, the applicant did not have a granted TPS application. Furthermore, as we found in our decision of October 2, 2007, the applicant has not established that she has met the provisions outlined in 8 C.F.R. § 244.2(f) for initial or late registration. Therefore, the applicant is not eligible to re-register for TPS, and the director's decision to deny the current re-registration application will be affirmed.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.