



U.S. Citizenship
and Immigration
Services

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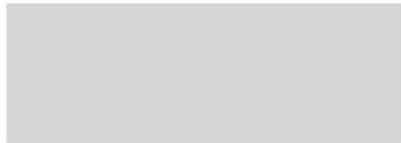
DATE: **AUG 18 2015**

FILE #: [REDACTED]
APPLICATION RECEIPT #: [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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the application. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and 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 July 9, 2014, the director denied the application because the applicant failed to establish eligibility for late registration.

On appeal, counsel asserts that the general rule of construction is that “when the legislature enacts an ameliorative rule designed to forestall harsh results, the rule will be interpreted and applied in an ameliorative fashion.... This is particularly so in the immigration context where doubts are to be resolved in favor of the alien.” Counsel cites to *Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9th Cir. 2003) to support his assertion. Counsel contends that the events involved in the applicant’s case and the humanitarian benefit sought support a claim of equitable tolling.

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, 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;
- (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 Salvadorans (and persons without nationality who last habitually resided in El Salvador) 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 TPS designation 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, to qualify for TPS they must meet the late registration requirements as stated above in 8 C.F.R. § 244.2(f)(2) or (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 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. 8 C.F.R. § 244.9(b). To meet this burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from the applicant's own statements. *Id.*

The record reflects that the applicant filed the initial TPS application on June 29, 2013.

In a request for evidence dated March 12, 2014, the applicant was requested to submit evidence establishing eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant, in response, provided evidence establishing he had an asylum application pending during the initial registration period. Included in the evidence is a notice from the [REDACTED] New York Asylum Office dated February 13, 2004, informing the applicant that his case has been terminated pursuant to his request to withdraw his asylum application from further consideration.

Under the provision at 8 C.F.R. § 244.2(g), the applicant had 60 days from the date of the notice withdrawing asylum to file a late initial application for TPS. The applicant did not file the TPS application until June 29, 2013.

On appeal, counsel request that USCIS apply the doctrine of equitable tolling to the TPS application to find it timely filed based on the events involved in the applicant's case and the humanitarian benefit.

The 60-day filing period after the expiration or termination of a qualifying condition at 8 C.F.R. § 244.2(g) is not a statute of limitations subject to equitable tolling. Although courts have found certain filing deadlines to be statutes of limitations subject to equitable tolling in the context of removal or deportation, counsel cites no binding case finding the 60-day TPS late registration filing deadline subject to equitable tolling.

Assuming, *arguendo*, that the provision set forth at 8 C.F.R. § 244.2(g) constituted a statute of limitation subject to equitable tolling, counsel has not demonstrated that the applicant is entitled to such equitable relief. To warrant equitable tolling, an applicant must demonstrate that he or she exercised due diligence in pursuing the case during the period sought to be tolled. *See Ali v. Gonzales*, 448 F.3d 515, 517 (2d Cir. 2007) (an alien must demonstrate that he exercised due diligence in pursuing the case during the period the alien seeks to toll); *Cekic v. I.N.S.*, 435 F.3d 167, 170 (2d Cir. 2006) (an alien will not be entitled to equitable tolling unless he can affirmatively demonstrate that he exercised reasonable due diligence during the time period sought to be tolled); *See also Iavorski v. I.N.S.*, 232 F.3d 124,135 (2d Cir. 2000) (holding that the alien did not exercise due diligence as a matter of law during the nearly 2-year period he sought to toll).

In the instant case, the applicant filed his TPS application over nine years after he withdrew his asylum application. The applicant has not provided an explanation for the delay in filing the TPS application and has, accordingly, not demonstrated due diligence.

The provisions for late registration detailed in 8 C.F.R. §§ 244.2(f)(2) and (g) were created in order to ensure that TPS benefits were made available to individuals who did not register during the initial registration period for the various circumstances specifically identified in the regulations. The applicant, on appeal, has not established that he has met the provisions outlined in 8 C.F.R. §§ 244.2(f)(2) or (g) for late registration. Consequently, the director's decision to deny the application for TPS on this ground 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.