



U.S. Citizenship
and Immigration
Services

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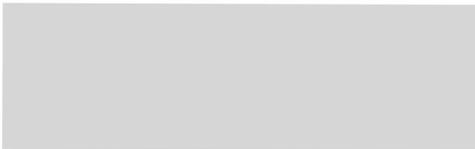
DATE: **JUN 10 2015**

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,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the application for Temporary Protected Status and it is now before the Administrative Appeals Office (AAO) 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. § 1254. On May 21, 2014, the director denied the application because the applicant failed to establish he was eligible for late registration.

On appeal, counsel asserts that the current application should be approved as the applicant has submitted sufficient evidence to establish late registration eligibility. Counsel contends that the applicant is eligible for late initial registration because he had a pending application for change of status during the initial registration period.

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 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 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 this burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from the applicant's own statements. *Id.*

We conduct appellate review on a *de novo* basis. *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 that the applicant filed his initial TPS application on June 24, 2002. On May 1, 2003, the director denied that application due to abandonment.¹ The applicant filed a motion to reopen on September 3, 2010. On August 8, 2011, the director dismissed the motion.

¹ No response was received from the notice of March 10, 2003, which requested that the applicant submit evidence of continuous residence since February 13, 2001 and continuous physical presence since March 9, 2001 in the United States.

The applicant filed subsequent TPS applications on March 8, 2005, September 3, 2010 and January 24, 2012, and indicated that he was re-registering for TPS or renewal of temporary treatment benefits. Each application was administratively closed by the director on August 16, 2005, July 5, 2011 and February 13, 2012, respectively.

The applicant filed the current application and indicated that it was his first application to register for TPS. The applicant asserted that he was eligible for late initial registration based on his previously filed TPS applications. On November 12, 2013, the applicant was asked to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). In response, counsel asserted that the applicant was eligible for late registration under 8 C.F.R. § 244.2(f)(2)(i) and (ii) because he had filed an application for change of status during the initial registration period and he was in a valid nonimmigrant status due to the approval of his initial TPS application on July 18, 2002.

In denying the application, the director indicated that the applicant's initial TPS application was never approved; that the grant of employment authorization was based on the applicant's eligibility for temporary treatment benefits based on his TPS filing; that no evidence had been submitted establishing the applicant had filed an application for change of status; and that the applicant had not submitted any other evidence to establish late registration eligibility.

Change of status is limited to a change of one nonimmigrant classification to another. Section 248 of the Act and 8 C.F.R. § 248.1. The classes of nonimmigrant aliens are defined by Act at section 101(a)(15). TPS, defined at section 244(a)(1) of the Act, is not included in the definition of nonimmigrant aliens. Consequently, a TPS application filed during the initial registration period does not render an applicant eligible for late registration under 8 C.F.R. § 244.2(f)(2)(i).

The provisions for late registration described in 8 C.F.R. § 244.2(f)(2) 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 has not submitted any evidence that he has met one of those provisions outlined in 8 C.F.R. § 244.2(f)(2). Accordingly, the director's conclusion that the applicant failed to establish his eligibility for late registration will be affirmed.

In the director's notice of November 12, 2013, the applicant was also advised that the record did not contain sufficient evidence to establish residence and physical presence in the United States for 2001, 2003 and 2004. Counsel, on appeal, asserts that had the applicant submitted the required evidence to establish continuous residence and continuous physical presence during the adjudication of his initial TPS application, he would have been granted TPS.

While the applicant has submitted sufficient evidence to establish his residence and physical presence during the periods in question on appeal, the applicant remains ineligible for TPS due to his failure to establish late registration eligibility.

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NON-PRECEDENT DECISION

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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.