



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-I-K-A-

DATE: NOV. 19, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

APPLICATION: FORM I-821, APPLICATION FOR TEMPORARY PROTECTED STATUS

The Applicant, a native and citizen of Sudan, seeks temporary protected status. *See* Immigration and Nationality Act (the Act) § 244, 8 U.S.C. § 1254(a). The Director, Vermont Service Center, denied the application. The matter is now before us on appeal. The matter will be remanded for further proceedings consistent with this opinion and for the entry of a new decision.

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 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 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.

Filing an application for TPS during a designated re-registration period does not render all individuals eligible for the benefit sought. The re-registration period is limited to individuals who have previously registered for TPS and whose applications have been granted or who did not file during the initial registration period and meet any 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 Sudan for TPS, 79 Fed. Reg. 52027 (September 2, 2014).

The Applicant filed the current application on June 2, 2014, and indicated at part 1.b. that he was re-registering for TPS or renewal of temporary treatment benefits.

On October 30, 2014, the Director denied the application because the Applicant was not eligible to apply for re-registration for TPS, as his initial application had been denied on December 11, 2013.¹ At the time the current application was filed, the Applicant did not have a granted TPS application and, therefore, he was not eligible to apply for re-registration for TPS. Accordingly, the Director's decision to deny the current application for re-registration will be affirmed.

On appeal, the Applicant requests that his application be reconsidered, as it was his intention to file an application for late initial filing. The Applicant asserts that his Form I-589, Application for Asylum and Withholding of Removal, filed before the immigration court on July 13, 2012, is still pending. The Applicant contends that he is eligible for late initial filing, as his immigration court case has been administratively closed.

The record reflects that the Applicant was subject to removal from the United States pursuant to section 237(a)(1)(B) of the Act. On September 13, 2013, the Applicant was scheduled for a master hearing before the immigration court. On that date, the Immigration Judge administratively closed the case.²

¹ The application was denied due to abandonment and no motion was filed from the denial of that application. 8 C.F.R. § 103.2(b)(15).

² Administrative closing of a case does not result in termination of the proceedings. It is merely an administrative convenience, which allows the removal of cases from the calendar in appropriate situations. See *Matter of Avetisyan*, 25

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The evidence of record does not indicate that the Director explored the possibility that the Applicant may have been attempting to file a late initial application for TPS. The matter therefore will be remanded so that the Director may consider the application and issue a decision under the late initial filing provisions of 8 C.F.R. § 244.2(f)(2). The Director may request any evidence deemed necessary to assist with the determination of the Applicant's eligibility for TPS.

The record also reflects that the validity period of the Applicant's fingerprint check has expired. Therefore, the matter will also be remanded for the purpose of sending the Applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements. Should the decision be adverse, the Director must give written notice setting forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i).

The burden of proof rests with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The matter is remanded to the Director for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of M-I-K-A-*, ID# 14471 (AAO Nov. 19, 2015)