



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

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

MATTER OF M-L-M-

DATE: JUNE 20, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Applicant, a native and citizen of El Salvador, seeks temporary protected status (TPS). *See* Immigration and Nationality Act (the Act) section 244, 8 U.S.C. § 1254a. Temporary protected status provides lawful status and protection from removal for foreign nationals, of specifically designated countries, who register during designated periods, satisfy country-specific continuous residence and physical presence requirements, are admissible to the United States, are not firmly resettled in another country, and are not subject to certain criminal- and security-related bars.

The Director, Vermont Service Center, denied the application. The Director concluded that the Applicant did not establish eligibility for late initial registration for TPS, because she did not file her application within 60 days of the denial of an application for change of status, adjustment of status, asylum, voluntary departure, or the termination of any pending relief from removal that is subject to further review or appeal.

The matter is now before us on appeal. In the appeal, the Applicant asserts that the Director erred in denying her TPS application because she is eligible for late initial registration, as her asylum application was pending and subject to further review when she filed for TPS. The Applicant further asserts that equitable tolling should be applied to her case, because she filed her TPS application within 60 days of becoming aware that her asylum application was no longer pending. The Applicant submits a brief and a statement.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking TPS. 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 the applicant 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.

....

The burden of proof is upon the Applicant to establish that the above requirements are met. *See* 8 C.F.R. § 244.9(a)(3). 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.*

II. ANALYSIS

The issue in this proceeding is whether the Applicant is eligible for late initial registration for TPS. On appeal, the Applicant asserts that she is eligible because when she filed her TPS application, she also had a pending application for asylum and an application for relief from removal that was subject to further review. The record reflects that the Applicant's asylum application was rejected in September 2001, and an Immigration Judge subsequently ordered her removed *in absentia* in 2002 and denied her motion to reopen in 2014. The Board of Immigration Appeals (Board) subsequently dismissed her appeal.¹ Because the record shows that when she filed her TPS application, the Applicant's asylum application was no longer pending and she did not have an application for relief from removal that was pending or subject to further review, we find the Applicant is not eligible for late initial registration for TPS.

A. Eligibility

As stated above, the Applicant has been found ineligible for late initial registration for TPS. An applicant who did not register for TPS during the initial registration period or subsequent extension of such designation may qualify for late registration upon satisfaction of the conditions in 8 C.F.R. § 244.2(f)(2), (g). 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, an applicant from El Salvador 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 applicant 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 record reflects that the Applicant filed her TPS application on August 15, 2014. On March 25, 2015, the Director denied the application because it was not filed within 60 days of the denial of an application for change of status, adjustment of status, asylum, voluntary departure, or after the termination of any request for relief from removal that was pending or subject to further review or appeal. The Director noted that the Applicant's asylum application was pending during the initial registration period, but it was rejected in 2001, and on January 2, 2002, the Applicant was ordered removed *in absentia*. She also noted that an Immigration Judge denied the Applicant's motion to reopen and rescind the removal order, and when the Board dismissed her appeal in 2014, it also found she was not eligible for late initial registration for TPS, as her application for late initial registration was untimely.

¹ The Board considered the Applicant's appeal both as an appeal and a motion to remand for the Immigration Judge to determine whether administrative closure is appropriate, and in its decision dismissing the appeal, the Board also denied the motion to remand.

On appeal, the Applicant states that she was not aware that her asylum application had been rejected and that she did not receive her notice to appear in immigration court. The Applicant states that she would have complied with the notice had she received it. She asserts that she is eligible for late initial registration because her motion to reopen her immigration court proceedings, filed in April 2014, was pending before the Board on appeal when she filed her TPS application in August 2014. She also asserts that her TPS application should be considered timely because she filed the application within 60 days after first viewing her notice to appear in immigration court, and it would be an unreasonable interpretation of 8 C.F.R. § 244.2 to require her to submit an application within 60 days of an occurrence of which she had no notice.

An addressee is presumed to receive ordinary mail that is properly sent. However, this presumption is weaker than the presumption that applies to documents sent by certified mail. *Matter of M-R-A-*, 24 I&N Dec. 665, 673 (BIA 2008) (respondent in removal proceedings overcame the presumption of delivery of a notice of hearing was sent by regular mail where he submitted affidavits indicating that he did not receive the notice, had previously filed an asylum application and appeared for his first removal hearing, and exercised due diligence in promptly obtaining counsel and requesting reopening of the proceedings). Each case where the presumption of delivery is at issue “must be evaluated based on its own particular circumstances and evidence.” *Id.* at 674.

The record reflects that in 2001, the former Immigration and Naturalization Service (INS) mailed the Applicant an asylum application rejection notice and a notice directing her to appear for an initial hearing in immigration court in January 2002. The notices were mailed to the Applicant at the address she provided on her asylum application and at which she had received her asylum interview appointment notice. The record does not include evidence showing that any notices were returned to the INS as undeliverable. While the Applicant asserts that she would have attended her hearing had she received her notice, she provides no evidence on appeal that corroborates her claims and supports concluding she did not receive notice of her initial immigration hearing date until 2014. Moreover, her asylum application, rejected in 2001, was not pending further review when she filed her motion and appeal in 2014. The Applicant has not established that she filed within 60 days following the termination of a condition described in 8 C.F.R. 244.2(f).

The Applicant also asserts that the Director erred because she did not issue a request for evidence (RFE) or a notice of intent to dismiss (NOID) before denying the TPS application. The Director, however, is not required to issue an RFE or a NOID; doing so is discretionary. If the totality of the evidence submitted does not meet the applicable standard of proof, and the adjudicator determines that there is no possibility that additional information or explanation will cure the deficiency, then a denial decision is appropriate. A NOID is “required when derogatory information is uncovered during the course of the adjudication that is not known to the individual, according to 8 C.F.R. 103.2(b)(16).” USCIS Policy Memorandum, PM-602-0085, *Requests for Evidence and Notices of Intent to Deny* 3 (June 3, 2013), <http://www.uscis.gov/laws/policy-memoranda>.

As the Applicant was aware of the deficiency in the record, the Director’s decision not to prepare an RFE or NOID is not erroneous. Additional information or explanation would not have cured the

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deficiency in the Applicant's case; thus no RFE was required. A NOID also was not required, as no derogatory information was uncovered that was unknown to the Applicant and was used as one of the bases of the Director's decision.

The provisions for late registration outlined in 8 C.F.R. § 244.2(f)(2), (g) were created in order to ensure that TPS benefits were made available to foreign nationals who did not register during the initial registration period due to circumstances specifically identified in the regulations. The Applicant has not established that she has met the provisions outlined in 8 C.F.R. §§ 244.2(f)(2) or (g) for late registration.

III. CONCLUSION

An applicant for TPS has the burden of proving that he or she meets the requirements for this benefit and is otherwise eligible under the provisions of section 244 of the Act. The Applicant has not established eligibility for TPS. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of M-L-M-*, ID# 15881 (AAO June 20, 2016)