



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

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

In Re: 23417818

Date: JAN. 3, 2023

Appeal of Vermont Service Center Decision

Form I-821, Application for Temporary Protected Status

The Applicant is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a.

The Director of the Vermont Service Center denied the application, concluding that the Applicant did not establish that he qualified for late initial TPS registration and met the continuous residence and physical presence requirements for TPS. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

On March 9, 2001, the Secretary of Homeland Security designated El Salvador for TPS.¹ Department of Homeland Security (DHS) regulations provide that an applicant who is a national of a foreign state so designated must register for TPS during the initial registration period announced by public notice in the Federal Register. 8 C.F.R. § 244.2(f)(1). To meet the initial registration requirements, Salvadoran nationals must have applied for TPS during the initial registration period, March 9, 2001, through September 9, 2002.

Applicants who did not register for TPS within the above time frame, may apply during any subsequent registration period, if they meet one of the late registration requirements described in the regulations at 8 C.F.R. § 244.2(f)(2) or (g).

¹ *Designation of El Salvador Under Temporary Protected Status Program*, 66 Fed. Reg. 14214 (Mar. 9, 2001). The TPS designation has been extended several times, with the latest extension valid until March 9, 2018. DHS terminated designation of El Salvador for TPS effective on September 9, 2019. 83 Fed. Reg. 2654 (Jan. 18, 2018). However, the designation will continue for as long as preliminary injunction ordered by court in *Ramos, et al v. Nielsen, et al.*, No. 18-cv-01554 (N.D. Cal. Sept. 14, 2020) remains in effect. See *Temporary Protected Status Designated Country: El Salvador*, <https://www.uscis.gov/humanitarian/temporary-protected-status/temporary-protected-status-designated-country-el-salvador>

Pursuant to 8 C.F.R. § 244.2(f)(2), to establish eligibility for late initial registration the applicant must show that during the initial registration period (March 9, 2001, through September 9, 2002) he or she:

- (i) was a nonimmigrant or had been granted voluntary departure status or any relief from removal;
- (ii) had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which was pending or subject to further review or appeal;
- (iii) was a parolee or had a pending request for re-parole; or
- (iv) was a spouse or child of a foreign national eligible to be a TPS registrant.

If the qualifying condition has expired or been terminated, the applicant must file for TPS within a 60-day period immediately following the expiration or termination. 8 C.F.R. § 244.2(g).

Individuals applying for TPS offered to Salvadorans must also demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

II. ANALYSIS

The issues on appeal are whether the Applicant has established eligibility for late initial TPS filing and, if so whether he has demonstrated that he meets the continuous U.S. residence and physical presence requirements for such status.

Upon review, we conclude that the Applicant has not met his burden of proof to show that he qualifies for late initial TPS registration. Because he is not eligible for TPS on that basis alone, we do not reach the issue of whether he satisfies the continuous residence and physical presence conditions for such status. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

The record reflects that the Applicant previously filed a Form I-821 in March 2001, during the initial TPS registration period under the Salvadoran designation. The Director denied that TPS request in 2004 for abandonment, after the Applicant did not appear for a scheduled fingerprint appointment.

In 2020, the Applicant filed the instant Form I-821 indicating that he was seeking TPS as a late initial registrant. The Director determined that the Applicant did not qualify for late initial TPS registration because his TPS request from the initial filing period was not an application for “relief from removal” as required under 8 C.F.R. § 244.2(f)(2)(i).

On appeal, the Applicant does not dispute that he is ineligible for late initial TPS registration on the grounds identified by the Director, nor does he claim that he meets any other criteria for late filing described in 8 C.F.R. § 244.2(f)(2) or (g). Instead, he asserts that he never received a denial of his initial Form I-821, and that his subsequent TPS re-registration requests filed in 2005 and 2006

“expressed his clear intent to further pursue his registration for [TPS] benefits at that time.”² He avers that his determination to maintain lawful status in the United States evidenced by his appearance for the biometrics appointment scheduled as part of the instant TPS request constitutes the “new and compelling evidence” that overcomes the denial of his initial TPS request.

We acknowledge the Applicant’s statements; however, we lack jurisdiction to review the denial of his initial TPS request which is not before us.³ The Applicant would have to seek reopening of that decision before the Director.

In conclusion, the Applicant has not demonstrated that he meets any of the eligibility criteria for late initial TPS filing. Consequently he has not overcome the basis for the denial of the instant TPS request, and his Form I-821 remains denied.

ORDER: The appeal is dismissed.

² The record shows that the Director denied both re-registration requests in 2005 and 2006, respectively.

³ We also note that there is no provision for appeal of a denial due to abandonment. 8 C.F.R. § 103.2(b)(15).