

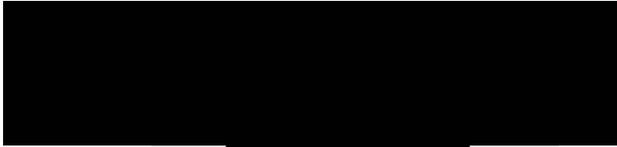
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U.S. Department of Homeland Security
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**U.S. Citizenship
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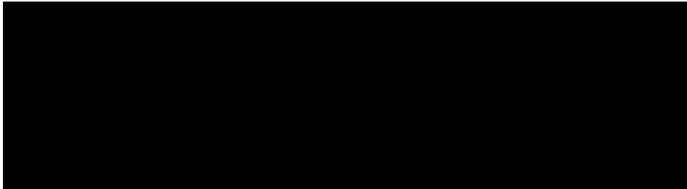
FILE: [REDACTED]
[WAC 05 22473017]

OFFICE: CALIFORNIA SERVICE CENTER DATE: JAN 11 2008

INRE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a 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.

The director denied the application because the applicant failed to establish he was eligible for late registration.

On appeal, counsel asserts that the applicant initially filed a TPS application in 2001 and, therefore, is seeking eligibility to file for re-registration.

Section 244(c) of the Act, and the related regulations in 8 c.P.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General 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 Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.P.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.

The phrase continuously physically present, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The phrase continuously resided, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial application with Citizenship and Immigration Services (CIS) on March 10, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

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 Citizenship and Immigration Services (CIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

At the time the applicant filed his TPS application, counsel submitted a statement indicating the applicant's former counsel, [REDACTED], claimed he had timely filed a TPS application during the initial registration period, but [REDACTED] did not have any evidence to corroborate his claim. Counsel stated that Mr. [REDACTED], had informed the applicant that he should not file a re-registration application. Counsel requested that the applicant be granted TPS given [REDACTED]'s ineffective assistance of counsel.

A claim based upon ineffective assistance of the representative requires (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with the representative with respect to the actions to be taken and what representations the representative did or did not make to the respondent in this regard, (2) that the representative whose integrity or competence is being impugned be informed of the allegations leveled against her and be given an opportunity to respond, and (3) that the claim reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of the representative's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988).

To the extent that the applicant has failed to produce evidence sufficient to substantiate an ineffective assistance of *counsel* claim, the AAO will review the record applying standard statutory and regulatory eligibility requirements and burdens of proof.

On August 4, 2006, the director denied the application because it was determined that the applicant had failed to respond to a Notice of Intent to Deny. The applicant appealed the decision to the AAO, and the case was remanded on April 13, 2007, as the record did not support the director's finding that a notice had been sent to the applicant. The AAO noted that the record contained a Notice of Intent to Deny that was addressed to another individual.

On May 19, 2007, a Notice of Intent to Deny was issued requesting the applicant to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit a *legible* copy of his social security card and evidence establishing: 1) his qualifying continuous residence from February 13, 2001; 2) his continuous physical presence in the United States from March 9, 2001; and 3) that he and [REDACTED] are one and the same person.

Counsel, in response, asserted that the applicant had initially filed a TPS application with previous counsel in 2001. Counsel stated in pertinent part:

That particular filing never included a G-28, but only the 1-765 and the 1-821 forms along with limited supported evidence. Nevertheless, being that it was midyear of 2001, [the applicant's] timing of filing was within the registration period. Henceforth, the application currently under review included no proof of having "had an application for change of status, adjustment of status, asylum, and voluntary departure, or any relief from removal which is pending or subject to further review or appeal." There was no attorney of record and thus there was no maintaining of any Notice of Actions issued by the Service. Furthermore, [the applicant] may have received a Notice of Action but had not retained it for his records being that he had sought out a legal representative who should have housed all documentation pertaining to his TPS.

Counsel asserted that the applicant had submitted sufficient evidence to establish his continuous residence and physical presence in the United States during the requisite periods. Counsel stated that most of the evidence submitted was under the alias, _____ and that this was not a legal name change. Counsel stated, "all of the addresses on the aforementioned evidence do coincide with [the applicant's] address history."

The director concluded that counsel had not provided any evidence to substantiate his claim that the applicant had filed a TPS application in 2001. The director also concluded that the applicant had failed to establish he was eligible for late registration. Accordingly, on September 11, 2007, the director denied the application.

On appeal, counsel once again asserts that the applicant filed a TPS application in 2001. Counsel, however, has not provided any credible evidence to support his assertion. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).). Furthermore, an examination of CIS records fails to disclose any evidence of this applicant having filed a TPS application prior to March 10, 2005.

The applicant has submitted evidence in an attempt to establish his qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his

Form I-821, Application for Temporary Protected Status, within the initial registration period. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS will be **affirmed**.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (B.D. Cal. 2001), *affd.* 345 F.3d 683 (9th Cir. 2003); *see also Dar v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

While the issues of the applicant's continuous residence and physical presence and use of an alias were not addressed by the director in denying the application, such issues will now be examined to determine the applicant's eligibility under 8 C.F.R. § 244.2(b) and (c).

In an attempt to establish continuous residence and physical presence during the requisite periods, the applicant provided the following evidence throughout the application process:

- Three earnings statements for the periods ending January 26, 2002, March 9, 2002, and April 13 and 20, 2002, from Cut Fruit Express and addressed to [REDACTED]
- An earnings statement for the period ending October 27, 2001, from Margolis Company and addressed to [REDACTED]
- Three earnings statements for the periods ending September 17, 2000, October 1, 2000 and December 3, 2000, addressed to [REDACTED]
- A billing statement dated February 22, 2001, from Qwest addressed to [REDACTED]
- His daughter's July 5, 2003, birth certificate.
- A Wisconsin identification card issued on January 20, 2004.
- An affidavit notarized October 9, 2007, from [REDACTED] who indicated to have met the applicant in 2005.
- An affidavit notarized October 9, 2006, from [REDACTED] who indicated to have met the applicant in September 2004.

On appeal, counsel asserts that there is an excessively abnormal focus and grounds for denial based on the use of an alias. As noted above, the denial of this application was not based on the applicant's failure to establish his alias. Nevertheless, it is the applicant's burden to establish that he and [REDACTED] are one and the same person. Evidence from employers establishing the use of an alias would have been sufficient to overcome this issue. Without corroborative evidence from his purported employers, the documents submitted have no probative value to establish that he is the same person as [REDACTED]

The affidavits from the affiants may only serve to establish the applicant's presence since 2004 and 2005. The affidavits neither establish the applicant's continuous residence since February 13, 2001, nor his physical presence since March 9, 2001.

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, or his continuous physical presence in the United States since March 9, 2001. The applicant has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Therefore, the application also must be denied for these reasons.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

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.