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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **AUG 05 2010**
[EAC 10 044 70010]

IN RE: Applicant: [REDACTED]

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

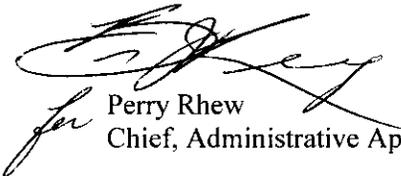
ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont 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. The director also found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant provides additional evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the requisite periods.

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 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 term *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 term *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 in the United States since March 9, 2001. The designation of TPS for El Salvadorans has been extended several times, with the latest extension valid until September 9, 2010, upon the applicant's re-registration during the requisite time period.

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. 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).

The first issue in this proceeding is whether the applicant is eligible for late registration.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his application with U.S. Citizenship and Immigration Services (USCIS) on November 12, 2009. 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.

On January 25, 2010, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant, in response, asserted, “[d]uring the initial registration period I did apply like thousands of Salvadorians for TPS for Salvador; unfortunately, as is of your knowledge the lawyer I hired screwed my paperwork badly writing down in my application whatever was popping in his mind by the truth.” The applicant provided a statement from his aunt, [REDACTED] who indicated the applicant “hired the services of the attorney [REDACTED] to deal with the TPS, this lawyer instead to deal with the TPS he filed an asylum application, issue my nephew never request.”

The director determined that the documents submitted did not establish that the applicant was eligible for late registration and denied the application on April 5, 2010.

In an attempt to establish late registration, the applicant, on appeal, provides copies of the statements that were previously submitted in response to the notice of January 25, 2010.

The record reflects on October 15, 2001, [REDACTED] added the applicant as a dependent to her asylum application. Along with the asylum application, [REDACTED] provided a birth certificate, which listed her as the applicant’s mother. In addition, the applicant provided a statement dated October 15, 2001, which listed the alien registration number of [REDACTED] whom he claimed to be his mother. The applicant indicated that he was submitting his case for political asylum. The applicant has been receiving employment authorization under asylum from May 13, 2002 through February 26, 2007. As such, the applicant’s and the aunt’s assertions that they were not aware of the activities of [REDACTED] are specious.

The applicant cannot qualify under the late registration exception as the asylum application filed during the initial registration was fraudulently created. The AAO can not and will not approve a TPS application that is based on a previously filed fraudulent asylum application.

The applicant has not submitted any credible 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 conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

The second issues in this proceeding are whether the applicant has established his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

On January 25, 2010, the applicant was also requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States.

The applicant, in response, provided a “Declaration of Honor-Agreement” purportedly signed on January 10, 2001, by the applicant and his brother, [REDACTED]. The applicant’s brother listed his residence in Columbus, Ohio and indicated that he would provide the applicant with free food and shelter for six months until the applicant gets a job. The applicant also provided several documents listing the brother’s name.

The director determined that the applicant had failed to submit sufficient evidence to establish TPS eligibility, and that the documents above only served to establish the brother's presence in the United States. Accordingly, the director denied the application on April 5, 2010.

On appeal, the applicant asserts that he provided evidence of his brother's residence "because I was living with him and the receipts used to come under the Primary person the most of the times." The applicant submits copies of documents that were previously provided along with additional documents in his brother's name. In an attempt to establish his residence and physical presence in the United States, the applicant submits a letter dated May 7, 2010, from [REDACTED] [REDACTED] for Moore Drywall & Paint in Westerville, [REDACTED] who indicates that he has known the applicant since January 14, 2001. The affiant indicated that the applicant assisted a sub-contractor who was working for Moore Drywall & Paint.

The letter from [REDACTED] and the agreement from the applicant's brother are questionable as the applicant indicated on his Form G-325A, Biographic Information, (signed October 15, 2001) residence in Los Angeles, Angeles, California during this timeframe. The applicant claimed on the form to have been employed at Domino's Pizza; no other employment was listed. The applicant, in affixing his signature on the Form G-325A, certified that the information he provided was *true* and *correct*.

The fraudulently created Form I-589 would only establish that the applicant has been present in the United States since October 15, 2001.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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). Consequently, the director's decision to deny the application for TPS on these grounds will also be affirmed.

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.

ORDER: The appeal is dismissed.