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

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: MAR 05 2010

[WAC 05 141 73617, *as it relates to*
SRC 01 202 56639]
[WAC 08 066 50510 – *Motion*]

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:

[redacted]

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

The applicant is a native and 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.

On motion, counsel for the applicant maintains that former counsel had wrongly appealed the denial of the applicant's re-registration application instead of seeking to reopen the initial TPS application and requests that the applicant's motion be accepted because the applicant did not learn of the denial of his initial TPS application until U. S. Citizenship and Immigration Services (USCIS) denied his TPS re-registration application. Counsel also submits some evidence regarding the applicant's criminal record.

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The record shows that the applicant filed an initial Form I-821, Application for Temporary Protected Status, with the Texas Service Center (TSC) on May 4, 2001 [SCR 01 202 56639]. The TSC Director issued a notice of intent to deny (NOID) on July 15, 2004, advising the applicant that an FBI (Federal Bureau of Investigation) background check based on his fingerprints indicated that he had been arrested twice on vehicular-related charges – (1) on March 13, 1999, in Austin, Texas, and (2) on April 15, 1999, in Garland, Texas. The applicant was requested to submit within 30 days the final court dispositions of these and any other arrests in the United States.

On September 7, 2004, the TPS application was denied by the TSC Director on the ground that the applicant had not provided the requested documentary evidence to establish his eligibility for TPS.

The applicant filed a re-registration application on Form I-821, Application for Temporary Protected Status, on February 18, 2005.

The director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

The applicant appealed the director's decision denying the re-registration application. Upon review of the record of proceeding, the AAO concurred with the director's conclusion and dismissed the appeal on July 27, 2007.

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 designated by the Attorney General is eligible for TPS 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.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.

El Salvadoran nationals applying for TPS 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 initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until September 9, 2010, upon the applicant's re-registration during the requisite time period.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. *See* 8 C.F.R. § 244.17.

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 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).

As stated above, the record reflects that the applicant submitted his initial application for TPS on May 4, 2001. In support of his application, the applicant submitted a copy of receipt # [redacted] from [redacted], indicating the applicant paid $255.62 on April 21, 2000, to "replace exhaust manifold labor" for a "90 Toyota."

On January 21, 2003, the applicant was requested to submit evidence to establish his continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States. The applicant was also requested to submit a photo identity document. The applicant, in response, provided the following documentation on February 13, 2003:

1. A March 10, 2001 receipt, # [redacted], in the amount of $300, in the name of [redacted], for "paidment card." The receipt was issued on a rent payment blank form and indicates the total "account" amount as $3000, with a balance due of $2700.
2. A copy of a Texas Department of Public Safety Under 21 Identification Card which shows an expiration date of January 20, 2002.

The TSC Director issued a new notice of intent to deny (NOID) on July 15, 2004, advising the applicant that an FBI (Federal Bureau of Investigation) background check based on his fingerprints indicated that he had been arrested twice on vehicular-related charges – (1) on March 13, 1999, in Austin, Texas, and (2) on April 15, 1999, in Garland, Texas. The applicant was requested to submit within 30 days the final court dispositions of these and any other arrests in the United States.

On September 7, 2004, the initial TPS application was denied by the TSC Director on the ground that the applicant had not provided the requested documentary evidence to establish his eligibility for TPS. An application denied for abandonment cannot be appealed; however, an applicant can submit a motion to reopen within 30 days.

On appeal of the denial of the re-registration application, the applicant's former counsel reasserted the applicant's claim of eligibility for TPS and submitted the following documentation:

3. Texas Title Application receipt dated February 10, 1999;
4. A January 15, 1999 receipt for automobile repairs issued by [redacted]

5. A duplicate of the receipt shown in Item #1 above;
6. Another receipt # [redacted] from [redacted], indicating the applicant paid $255.62 to "replace exhaust manifold labor" for a "90 Toyota" with the date of the receipt altered to show April 21, 2001;
7. Copies of U.S. Individual Income Tax Returns and amended returns for the years from 2001 through 2005;
8. A Fone Zone receipt dated July 6, 2003;
9. A Dolex Dollar Express receipt dated August 18, 2004; and
10. Certified Misdemeanor and Felony Record Searches from the Dallas County Clerk.

The AAO concurred with the director's conclusion and dismissed the appeal on July 27, 2007.

On motion, counsel asserts that the denial of the initial TPS application had been sent to an incorrect address and the applicant was not aware that his application had been denied. The applicant submitted his initial application on May 4, 2001. As discussed above, the applicant responded to a NOID sent to the address the applicant provided on that application. On his re-registration application filed on September 10, 2003, the applicant stated his address as [redacted]

Subsequently, both the July 15, 2004 NOID and the September 7, 2004 NOD pertaining to the initial application were mailed to [redacted]

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Counsel claims that the applicant's former counsel should have sought to reopen the initial TPS application rather than appealing the denial of the re-registration application and that the initial application should be reopened since the applicant timely submitted the requested documentation and he was not aware of the denial of the initial application. While the aforementioned notices did not clearly indicate that "192" was an apartment number, the notices were not returned as undelivered. However, the record reflects that counsel subsequently submitted two letters from the County and District Criminal Courts of Dallas County, Texas, indicating that a search of court records did not reveal that the applicant had been convicted of any misdemeanor or felony in those courts. Upon further review of the record of proceeding, the AAO noted in its prior decision that the applicant's two arrests listed in the FBI report occurred in Austin, Texas, and in Garland, Texas and that no court records had been submitted from those jurisdictions. On motion, the applicant submits copies of documentation pertaining to the applicant's March 13, 1999 arrest in Austin, Texas for "Driving While Intoxicated," [redacted]. The applicant also submitted an Affidavit from [redacted], the custodian of records for the Garland Police Department and four pages of [redacted] pertaining to the applicant's April 15, 1999 arrest in Garland, Texas for "Fail Stop/Render Aid." As of this date, the applicant has failed to submit the final court disposition for

his April 15, 1999 arrest in Garland, Texas. In addition, the applicant indicated on his initial Form I-821 TPS application in Part 4 - Eligibility Standards "2nd DWI and on probation." He has not provided documentation pertaining to the second DWI or the details of his probation. The burden is on the applicant to provide affirmative evidence of his eligibility. 8 C.F.R. § 244.9(a). The applicant has not met this burden. Therefore, the director's decision to deny the application on this ground is affirmed.

While the documentation in the record indicates that the applicant was in the United States prior to the February 13, 2001, the evidence provided does not establish that he had continuously resided in the United States from February 13, 2001 and was continuously physically present in the United States from March 9, 2001 through the date of filing. The receipts from [redacted] are of no probative value since the date on the second copy of receipt #[redacted] has been altered to show the year as 2001. In addition, the "paidment card" receipt from [redacted] is questionable since it was issued on a rent payment blank form. While the applicant submitted copies of tax returns and amended tax returns for the years from 2001 through 2005, the forms are not signed and dated by the applicant, therefore, it is not clear that the forms were actually prepared and filed in the years indicated. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain the submission of an altered receipt. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish his continuous residence and continuous physical presence during the requisite period.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the period from He has, thereby, 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 will 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 motion is dismissed