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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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DATE: **SEP 11 2012** Office: VERMONT SERVICE CENTER FILE:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:



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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 denied the application because the applicant had failed to establish his qualifying continuous residence in the United States during the requisite period.

On appeal, counsel asserts that the “applicant was not apprehended on March 1, 2005, while attempting to enter the United States without inspection, this information was stated to officials incorrectly.” Counsel states that the applicant’s first and only entry into the United States was in September 2000, and since that time he has continuously resided in the United States. Counsel submits additional documentation in an attempt to establish the applicant’s residence in the United States since February 13, 2001.

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, 2013, 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. 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 record reveals that the applicant filed his application on November 29, 2011. Along with his TPS application, the applicant submitted a copy of his: 1) El Salvadoran passport issued on April 27, 2011; 2) birth certificate with English translation; 3) father's current employment authorization card valid June 10, 2011 through March 9, 2012.<sup>1</sup>

In *Matter of N-C-M-*, 25 I&N Dec. 535 (BIA 2011), it was held that in order to qualify for late initial registration for TPS, an applicant filing as the "child of an alien currently eligible to be a TPS registrant" must establish that he or she was a "child" only "at the time of the initial registration period," not at the time when the application for late initial registration is filed.

In the instant case, during the initial registration period, the applicant was a child (16 years old) and his parent was a TPS registrant. USCIS records reflect that his parent is currently eligible to be a TPS registrant. In view of the BIA's decision, the applicant has established late registration eligibility. Therefore, the finding of the director that the applicant had failed to establish eligibility for late registration will be withdrawn.

The second issue to be addressed is whether the applicant has established his continuous residence in the United States since February 13, 2001.

Along with his TPS application, the applicant submitted affidavits from his father, [REDACTED], and his siblings, [REDACTED], who attested to the applicant's entry into the United States in September 2000. The applicant also submitted an affidavit indicating that he entered the United States in September 2000 and that, "I mistakenly stated that I arrived in the United States in 2005. I miscalculated my year of entry because I was trying to calculate my entry when I was fifteen years of age."

USCIS records reflect that on August 16, 2011, the applicant was interviewed by Immigration and Customs Enforcement. The applicant admitted that he first entered the United States on March 1, 2005, at or near Roma, Texas.

On March 12, 2012, the applicant was requested to submit evidence establishing his continuous residence since February 13, 2001 and continuous physical presence since March 9, 2001, in the United States. The applicant, in response, submitted:

- A notarized affidavit from cousins, Doni and Ana Hernandez, who indicated that the applicant resided with them at 501 Viola Road, Apt. 7A, Spring Valley, NY 10977 from January 2001 to December 2002. The affiants attested to the applicant's

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<sup>1</sup> USCIS records indicate that the applicant's father filed his initial TPS application on February 8, 2002, and it was subsequently approved.

residence at another address in Spring Valley, New York prior to his move to Minnesota.

- A notarized affidavit from [REDACTED] who indicated that the applicant resided with him at [REDACTED] from January 2001 to December 2002. The affiant attested to the applicant's employment as a landscaper from 2005 to 2007 at [REDACTED] Corp.
- A letter dated March 29, 2012, from [REDACTED] Corp. in [REDACTED] New York, who indicated that the applicant was in his employ as a landscaper from April 4, 2005 through the end of the 2007 fall season.
- A letter dated March 26, 2012, from [REDACTED] of Church [REDACTED] Minnesota, who indicated that he had known the applicant for four years.
- Documentation from State Farm regarding an auto accident that occurred in February 2009.
- An undated bank receipt from Wells Fargo Bank, an invoice dated December 1, 2009 from [REDACTED] Inc., a 2007 wage and tax statement, a receipt dated March 16, 2008 from [REDACTED] and an envelope postmarked October 8, 2008.

The director determined that the applicant had failed to submit sufficient evidence to establish continuous residence since February 13, 2001, as USCIS records revealed that he had been apprehended at or near Roma, Texas on March 1, 2005, while attempting to enter the United States without inspection. Consequently, on May 23, 2012, the director denied the application.

On appeal, counsel submits additional copies of the documents that were previously provided along with:

- An amended Form G-325A, Biographic Information.
- A copy of the applicant's old passport issued on January 4, 2006, by [REDACTED]
- Wage and Tax Statement, Form W-2, and U.S. Individual Income Tax Return, Form 1040A, for 2005, 2006, and 2007.
- Probative documents establishing the applicant's residence and presence in the United States during 2008, 2009 and 2010.
- Documents pertaining to the residence and employment in the United States of the applicant's father.

Although the applicant has established that during the initial registration period, he was a child of an alien who was a TPS registrant, the regulations do not relax the requirements for eligibility for TPS. The child is still required to meet the residence and physical presence requirements as provided in 8 C.F.R. § 244.2(b) and (c).

The AAO does not view the affidavits attesting to the applicant's residence in the United States since September 2000 as substantive to support a finding that the applicant has continuously resided in the United States since February 13, 2001, as inconsistent and contradicting statements have been submitted. Specifically:

1. Along with his TPS application, the applicant presented a Form G-325A which listed his residence since September 2000. The applicant indicated that he resided at [REDACTED] New York from September 2000 through March 2005. However, counsel, on appeal, presents a Form G-325A that has been amended to indicate that the applicant resided at [REDACTED] New York from September 2000 to January 2001 and at [REDACTED] from January 2001 to December 2002. Counsel, however, has not provided a plausible explanation to the changes made.
2. In her brief submitted with the TPS application counsel indicated that the applicant "has been continuously residing with his father and brother in the United States" since joining them in September 2000. A review of the addresses listed on the father's TPS applications does not correspond with the timeframe of the addresses provided on the amended Form G-325A through 2006. Likewise, the addresses listed on the TPS applications for the applicant's brother [REDACTED] do not correspond with the addresses provided on either Form G-325A.
3. The affidavits from the applicant's father, siblings and cousins lack probative value as they raise questions to their credibility. [REDACTED] indicated on his re-registration TPS applications filed on July 29, 2003 and February 8, 2005 that the applicant was residing in El Salvador.

These factors raise significant issue to the legitimacy of the applicant's residence in the United States from before February 13, 2001 through February 28, 2005 and tend to establish that the applicant utilized documents in a fraudulent manner in an attempt to support his claim of residence and physical presence in the United States during the requisite periods. By engaging in such an action, the applicant has irreparably harmed his own credibility as well as the credibility of his claim of continuous residence and continuous physical presence in the United States for the requisite periods.

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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Given the credibility issues arising from the documentation provided by the applicant it is determined that the applicant has not met his burden of proof. The applicant has, therefore, failed

to establish that he has met the criteria described in 8 C.F.R. § 244.2 (c). Consequently, the director's decision to deny the application for TPS on this ground 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 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Beyond the director of the director, based on the credibility issues addressed above, it is determined that the applicant has not met his burden of proof in establishing continuous physical presence in the United States since March 9, 2001. 8 C.F.R. § 244.2(b). Therefore, the application must be denied on this basis as well.

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.