



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JUN 24 2013

Office: VERMONT SERVICE CENTER

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.

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,

Ron Rosenberg
Acting 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 native of El Salvador and a citizen of Canada 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 submit sufficient evidence to establish that he was not firmly resettled in Canada prior to entering the United States.

On appeal, counsel for the applicant asserts that the applicant was not resettled in Canada “prior to arrival in the United States,” rather, “he resettled in Canada after his arrival in the United States.”

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 March 9, 2015, 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).

On June 25, 2008, the director requested that the applicant provide a list of all of his addresses for the three years prior to entering the United States, including city, state, country and length of residence. In addition, the director requested a copy of an identity document as well as evidence of the applicant's continuous residence and continuous physical presence in the United States during the required time periods. On August 28, 2008, the applicant submitted copies of tax forms, a marriage certificate and receipts. The director found that the applicant did not provide a list of all of his addresses for the three years prior to entering the United States as had been requested. The record also contains a copy of the applicant's El Salvadoran birth certificate and the biographical

page of his Canadian passport, and an unclear photocopy of a document that appears to be a California identity card. The dates on the card are not legible.

The director found that the evidence submitted did not establish that he was not firmly resettled in another country prior to entering the United States.

On appeal, counsel for the applicant states that the applicant first entered the United States in 1974 and remained for 13 years until 1987. He stated that the applicant applied for asylum but his application was not adjudicated and he departed the United States to Canada to apply for asylum there where "he won his case." Counsel states that the applicant became a Canadian resident in 1988 and a Canadian citizen in 1990. He states that the applicant re-entered the United States as a visitor around August 1, 1994, and has resided here ever since. Counsel argues that the firm resettlement rule does not apply in the applicant's case.

The applicant has not provided the list of his previous addresses as requested by the director, nor has he submitted sufficient evidence to establish continuous residence and continuous physical presence in the United States during the requisite periods. Consequently, the AAO finds that the evidence of record does not establish that the applicant has met the continuous residence and continuous physical presence requirements for TPS and, therefore, it must be concluded that the applicant was firmly resettled in Canada.

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.