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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JAN 15 2014 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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
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 Honduras and El Salvador who is applying for 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 that he was eligible for late registration. The director also denied the application because the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, counsel asserts that the applicant is a dual citizen of Honduras and El Salvador and that the applicant is eligible for TPS as a qualified family member of a TPS registrant.

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 TPS 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.

Persons applying for TPS offered to Hondurans must demonstrate that they have continuously resided in the United States since December 30, 1998, and that they have been continuously physically present since January 5, 1999. The designation of TPS for Hondurans has been extended several times, with the latest extension valid until January 5, 2015, upon the applicant's re-registration during the requisite time period.

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 first issue to be addressed is the applicant's nationality.

Counsel, on appeal, asserts that the applicant is also a citizen of El Salvador and that he is awaiting a letter from a municipality in El Salvador to confirm his citizenship. To date, no evidence has been provided to support counsel's 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). Accordingly, the applicant has only established his nationality as a Honduran.[1]

The second issue to be addressed is whether the applicant is eligible for late registration.

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. If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

[1] A copy of a Honduran passport was submitted in the applicant's name.

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).

Along with his TPS application the applicant submitted a photocopy of a Certificate of Marriage from indicating that he was married to on September 26, 2001. The applicant also submitted a copy of employment authorization card (category A12).

The marriage certificate, however, raised question to its authenticity as indicated on her Form I-821 signed September 18, 2002 and August 29, 2003 to be single.

Therefore, on October 25, 2013, the AAO sent a notice to the applicant requesting that a certified marriage certificate issued by the Circuit Court in the county that his marriage was filed be provided within 30 days. The applicant, in response, submitted a copy of his September 26, 2001 marriage certificate certified on November 13, 2013 by the Office of the Clerk of The Circuit Court for

The director, in denying the application, noted in pertinent part:

> You were informed in error by USCIS that you are eligible to take advantage of the late initial filing provisions of the TPS regulation. You submitted your marriage certificate showing that you married your wife, a TPS registrant, on September 26, 2001. In order for you to qualify under "iv" above, you would have had to marry your spouse during the initial registration period for Honduran TPS which was January 5, 1999 through August 20, 1999.

The applicant's spouse is a national of another TPS designated country (El Salvador). The regulation at 8 C.F.R. § 244.2, provides that an alien may in the discretion of the director be granted TPS if the alien establishes that he or she meets all the requirements listed in subparagraphs (a), (b), (c), (d), (e) and subparagraph (f)(1), or (f)(2).

In *Matter of Echevarria*, 25 I&N Dec. 512 (BIA 2011), the Board of Immigration Appeals noted that subsections (f)(1) and (2) are divided by the disjunctive conjunction "or" and that the provisions of subsection (f)(2) are not included in the eligibility requirements for initial TPS registrants in subsection (f)(1). The court found that subsection (f)(2), which is comprised of subparagraphs (i) through (iv), sets forth four separate and distinct conditions precedent for late initial registration for TPS. Applicants qualifying for late initial registration under one of the four conditions precedent set forth in subsection (f)(2) must still establish eligibility for TPS in accordance with subsections (a) through (e). *Id.* at 518-19.

Pursuant to the above court's decision and the regulation at 8 C.F.R. § 244.2, the applicant only has to meet the requirement in subsection (f)(1) or (f)(2). In the instant case, the applicant has met the eligibility requirement under 8 C.F.R. § 244.2(f)(2)(iv).

Accordingly, the director's finding that the applicant has not met late registration eligibility as a spouse of an alien currently eligible to be a TPS registrant is withdrawn.

The third and fourth issues to be addressed are whether the applicant has established continuous residence and continuous physical presence in the United States during the requisite periods.

The director determined that the applicant had failed to submit evidence to establish residence in the United States from 1998 through 2000, 2002, 2003, 2007 through 2009, 2011 and 2012.

The applicant is attempting to acquire a benefit through his spouse who is a national of El Salvador. Therefore, we look to the required dates that the Secretary designated for El Salvador to establish continuous residence and continuous physical presence. As stipulated in section 244(c) of the Act, the Secretary designated the dates required to establish continuous residence as of February 13, 2001, and continuous physical presence since March 9, 2001.

On appeal, the applicant submits:

- An affidavit from [redacted] who indicates that she first met the applicant at her mother's birthday party on July 22, 2000. The affiant indicates that the applicant has helped her move to apartments on several occasions in the last few years. The affiant attested to the applicant's character.
- An affidavit from [redacted] who indicates that she first met the applicant at her birthday party on July 22, 2000; that she sees the applicant regularly at family events and holidays; and that the applicant helped her move into her home in 2012. The affiant attested to the applicant's character.

The AAO does not view these affidavits as substantive to support a finding that the applicant has continuously resided and has been continuously physically present in the United States during the requisite periods. The only types of affidavits listed as acceptable evidence of an alien's continuous residence and continuous physical presence in the United States at 8 C.F.R. § 244.9(a)(2) are: affidavits supplied by employers; affidavits supplied by organizations with which a self-employed alien has done business; and, affidavits supplied by officials of organizations of which the applicant has been a member. The regulation at 8 C.F.R. § 244.9(a)(2) does not list affidavits of witness from friends, acquaintances, or family members as acceptable evidence of continuous residence and continuous physical presence during the requisite time frames. While such affidavits may be given some consideration under the provision of 8 C.F.R. § 244.9(a)(2)(vi)(L) as "any other relevant document," the evidentiary standard set forth at 8 C.F.R. § 244.9(a)(2) clearly gives greater evidentiary weight to contemporaneous documents as proof of an alien's continuous residence and physical presence in the United States during the requisite time frames. As the applicant claims to have lived in the United States since 1999, it is reasonable to expect that he would have some

type of contemporaneous evidence to support his claim. However, he has not submitted any of the documents suggested in the Notice of Intent to Deny of August 10, 2012.

Furthermore, the AAO disagrees with the director's finding that the applicant had established residence in the United States in 2001 based on his marriage on September 26, 2001 and his Virginia learner's permit and driver's license issued and May 24, 2001 and June 27, 2001, respectively. These documents only serve to establish the applicant's presence in the United States since May 24, 2001; they cannot establish residence and physical presence since February 15, 2001 and March 9, 2001, respectively.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence and continuous physical presence during the periods in question seriously detracts from the credibility of his claim. He 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 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.

While not the basis for the dismissal of the appeal, it is noted for the record that on August 11, 2000, a hearing was held and the applicant was ordered removed *in absentia*. On August 15, 2000, a Form I-205, Warrant of Removal/Deportation, was issued.

ORDER: The appeal is dismissed.