

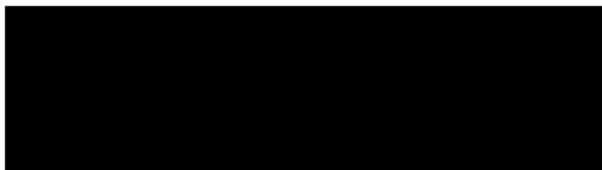
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of **Homeland Security**
20 Mass. Avenue, N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



FILE:

[WAC 05 203 77689]

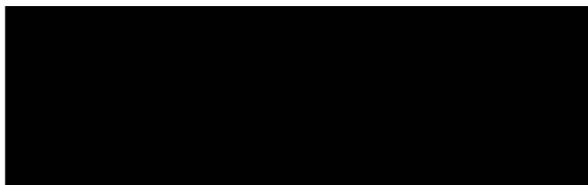
[WAC 08 065 51994, *motion*]

OFFICE: Vermont Service Center DATE:

JUL 01 2008

INRE:

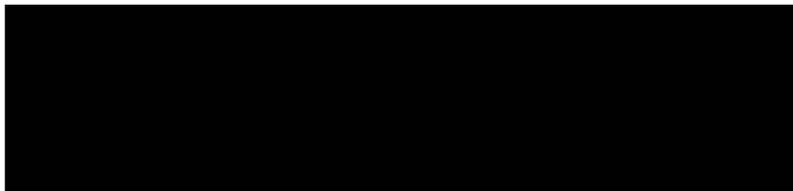
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is stated to be a citizen of EI 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 record reveals that the applicant filed a TPS application during the initial registration period on April 17, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 187 52082. The director denied that application on September 30, 2004, after he determined that the applicant had abandoned his application based on his failure to appear for fingerprinting on April 2, 2004. There is no appeal from a denial due to abandonment; however, the applicant could have filed a motion to reopen within 30 days of the date of the denial notice. 8 C.E.R. § 103.2(b)(15). The record does not reflect that the applicant filed a motion within the allotted timeframe.

The applicant filed the current Form 1-821, Application for Temporary Protected Status, on April 21, 2005, under CIS receipt number WAC 05 203 77689, and indicated that he was re-registering for TPS. The director denied the re-registration application on August 16, 2005, 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 to the AAO on September 8, 2005. The AAO reviewed the record of proceeding and determined that the applicant was not eligible to re-register for TPS because he had not previously been granted TPS, and the applicant had not provided any evidence to establish that the application should be accepted as a late initial registration under 8 C.E.R. § 244.2(f)(2). Therefore, the AAO affirmed the director's decision and dismissed the appeal on November 21, 2006. On **February 9, 2007**, the applicant submitted a motion to reopen. On August 27, 2007, the AAO dismissed the motion to reopen and affirmed the decision dated November 21, 2006. In addition, the AAO also found that the applicant had submitted altered, fraudulent documents in an attempt to establish his continuous residence and continuous physical presence in the United States during the requisite periods. The applicant has now submitted a second motion to reopen.

On motion, counsel states that the applicant is a national of EI Salvador who entered the United States on April 20, 2000. Counsel also states that the applicant has not departed the United States and has continuously resided in the state of California since his entry into the United States.

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. 8 C.F.R. § 244.17.

In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

There is no indication that the applicant was attempting to file a late initial application for TPS instead of an annual re-registration. Moreover, there is no evidence in the file to suggest that the applicant is eligible for late registration for TPS under 8 C.E.R. § 244.2(f)(2).

It is noted that the record of proceeding contains insufficient credible evidence to establish that the applicant has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c).

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 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.

The phrase 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 phrase 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, 2009, 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 Citizenship and Immigration Services (CIS). 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 motion, counsel reasserts the applicant's eligibility for TPS and submits the following evidence in addition to the previously submitted evidence:

1. Copies of the Fonn 1-821, Application for Temporary Protected Status and Fonn 1-765, Application for Employment Authorization, signed on April 10, 2001, September 9, 2002, September 8, 2003, February 16, 2005, and September 5, 2007;
2. Copies of the applicant's birth certificate and an English translation;
3. A copy of a **mail envelope post** marked February 13, 2001 from Urgente Express International Courier, addressed to [REDACTED];
4. Copies of money order receipts from the United States Postal Service dated March 29, 2001, February 16, 2005, and September 5, 2007;
5. Copies of hand-written payment receipts dated March 19, 2001 and April 10, 2001;
6. Copies of the applicant's employment authorization cards valid from June 20, 2001 to September 9, 2002, September 10, 2002 to September 9, 2003, and February 14, 2004 to March 9, 2005;
7. A copy of the applicant's Social Security Card;
8. A copy of a Fonn AR-11, Alien's Change of Address Card, dated February 16, 2005;
9. A copy of a letter from USCIS dated January 19, 2006;
10. A copy of the applicant's son's US passport;
11. A copy of a September 21, 2005 judgment from the Los Angeles Superior Court awarding custody of the applicant's son to the applicant;
12. A copy of the Los Angeles Superior Court Proof of Summons dated September 12, 2005;
13. A declaration of attorney Marta Victoria Canossa dated November 20, 2007;
14. Copies of money transfer receipts from RIA Envía, dated December 29, 2000, and January 4, 2001;
15. Copies of pay stubs from **Temptrak Corporation** and Mikes Tire Man Incorporated for the year 2000, under the Social Security Number _____;
16. Copies of pay stubs from Mikes Tire Man Incorporated dated November 14, 2000, **January 9**, 2001, April 24, 2001, June 26, 2001, and July 31, 2001, issued to Social Security Number [REDACTED];
17. Copies of pay stubs from Mikes Tire Man **Incorporated for the** period from September 25, 2001 to August 26, 2003, issued to Social Security Number _____;
18. Copies of pay stubs from C R A Tires Inc., for the period from April 18, 2005 to August 7, 2005, issued to Social Security Number _____ =
19. Copies of pay stubs from C R A Tires Inc., for the period from March 20, 2006 to June 11, 2006, issued to Social Security **Number** _____;
20. Copies of Fonn W-2, Wage and Tax Statement from Mikes Tireman Inc., issued to Social Security Number 605-27-9586, for the years 2001, 2002, and 2003;
21. Copies of Fonn W-2 from Goodyear Tire & Rubber Company, C R A Tires Inc., RXI Plastics, Inc., Mikes Tireman Inc., and United Staffing Services, Inc., for the year 2004;
22. Copies of Fonn W-2 from Rally Management Services and C R A Tires Inc., for the year 2005;

23. Copies of Forms 1040, U.S. Individual Income Tax Return for the years 2001, 2002, 2003, 2004, 2005, and 2006;
24. Copies of check payable to _ from AMS Tires Inc., dated July 15, 2007 and August 1, 2007;
25. A copy of a phone bill from AT & T for the period from August 8, 2007 to September 7, 2007;
26. Copies of money transfer receipts from Sigue Corporation dated September 17, 2007, and September 30, 2007; and,
27. A copy of evidence of Compliance with Biometrics dated September 25, 2004.

On motion, counsel states that the initial denial of the applicant's TPS application was in error and if that had not occurred, the timelines of the prior motion would not be an issue. However, the applicant's initial TPS application was denied because the applicant failed to appear for a scheduled fingerprinting appointment. It is noted that the notice scheduling the appointment was sent to the correct address. Furthermore, on her statement, Declaration of Attorney Marta Victoria Canossa, counsel states that she "saw no need to file the Motion to Reopen within 30 days since last decision." The notice of decision, dated September 30, 2004, clearly states that although a denial due to abandonment may not be appealed, the applicant may file a motion to reopen within 30 days of the Service's decision. The applicant did not file a motion to reopen within the allotted time frame. In this case, CIS is not responsible for any action or inaction of the applicant's representative. There is no waiver available, even for humanitarian reasons, of the requirements stated above.

Based on the inconsistencies of the earning statements and the pay stubs, it appears that the applicant has submitted altered documents in an attempt to establish his continuous residence and continuous physical presence in the United States during the requisite periods. Moreover, on her statements, counsel states that "some document were accidentally include in Mr [REDACTED]'s record, such misunderstanding has been addressed in Mr. [REDACTED]'s attached sworn declaration," and " He inadvertently brought me some pay stubs that belonged to one of his former co-worker who has a similar name to his....." The applicant has not provided a credible explanation of why he would have documents belonging to his former co-worker and then submit them as evidence to support his application.

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 sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). Altered documents are not considered credible and greatly reduce the credibility of other documents contains in the record of proceedings. On motion, the applicant failed to explain or reconcile such inconsistencies. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

It is noted that counsel, on motion, asserts the applicant has "shown good cause" because he has never knowingly failed to appear for fingerprinting. She further asserts that the applicant appeared for every ASC appointment that was given to him and it was never his intention to abandon his TPS status. "Good cause" pertains to withdrawal of TPS for applicants who had been approved for TPS previously and had not "willfully" failed to re-register. The applicant, in this case, was never approved for TPS.

Furthermore, it is also noted that the applicant has not submitted any photo identification to establish his nationality and identity as required by 8 C.F.R §244.9(a)(1).

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.c. § 1361.

ORDER: The motion to reopen is dismissed. The previous decision of the AAO is affirmed.