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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [REDACTED]
[EAC 07 224 51341]

Office: VERMONT SERVICE CENTER

Date: APR 02 2009

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:



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).

John F. Grissom,
Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal 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.

The director determined that the applicant failed to establish he: 1) had continuously resided in the United States since February 13, 2001; 2) had been continuously physically present in the United States since March 9, 2001; and 3) was eligible for late registration. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the applicant is eligible for late initial registration and has been continuously physically present in the United States during the qualifying period.

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 as designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 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.

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.

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 that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until September 9, 2010, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed this application on July 23, 2007.

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 record reveals the following offenses:

- (1) On September 7, 2002, the Sheriff's Office at Central ID Bur Oakland, California arrested the applicant for "DUI Alcohol/Drugs." and "Driving w/o License."
- (2) On May 16, 2003, the Sheriff's Office at Central ID Bur Oakland, California arrested the applicant for "Driv w/o License", and two counts of "DUI Alcohol/Drugs."
- (3) On April 6, 2004, the San Jose Department of Corrections arrested the applicant for "Driving Under the Influence" and two counts of "Unlawful to Drive Unless."

- (4) On April 8, 2004, the Sheriff's Office at Central ID Bur Oakland, California arrested the applicant for "DUI Alcohol/Drugs" and two counts of "Drive w/o/ License."

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding confirms that the applicant filed his initial TPS application on July 23, 2007, after the initial registration period for Salvadorans had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from March 9, 2001 through September 9, 2002, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed 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).

On October 3, 2007, the applicant was provided the opportunity to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the filing date of the application. In addition, the applicant was also requested to submit court documentation relating to his criminal record. The applicant, in response, provided evidence in an attempt to establish continuous residence and continuous physical presence during the qualifying period. The applicant also submitted final court dispositions for one of his arrests. The applicant did not present evidence of his eligibility for late registration. Therefore, the director denied the application.

On appeal, counsel for the applicant states that the applicant has been in the United States since 1991 when he was 12 years old. According to counsel, the applicant's mother filed a Form I-485, Application to Register Permanent Residence or Adjust Status. However, there is no indication in the record that the applicant's mother filed a Form I-485 application or that the applicant had an application for adjustment of status pending during the initial registration period. Counsel also states that the applicant's mother applied for asylum in 1990 and it was granted to her and her family including the applicant. Information in the record reflects that the applicant filed an asylum application on October 15, 1993; however, the asylum application was administratively closed/withdrawn on October 1, 1997. Consequently, the director's decision to deny the application on this ground is affirmed.

The applicant also submits evidence in an attempt to establish his continuous residence and physical presence in the United States during the qualifying period. However, this does not mitigate the applicant's failure to file his TPS application within the initial registration period. The applicant has not submitted sufficient evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant failed to establish his eligibility for late registration will be affirmed.

The second and third issues in this proceeding are whether the applicant has established his continuous residence in the United States since February 13, 2001 and his continuous physical presence in the United States since March 9, 2001.

As stated above, the applicant was requested on October 3, 2007 to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the following documentation:

1. Copies of a Request for Asylum, Biographic Information and page 2 of a Form I-130 filed by the applicant's mother.

2. Copies of a Driver License application and test results dated October 12, 2001 and December 28, 2001.
3. Copies of earning statements dated January 2, 2000, October 27, 2000, November 10, 2000, November 24, 2000, December 8, 2000, December 22, 2000, February 28, 2001, August 7, 2001, and October 30, 2001, and a 2002 Wage and Tax Statement.

The director concluded that the applicant had failed to establish his qualifying residence and physical presence in the United States during the requisite periods and denied the application. On appeal, the applicant submits:

4. Copies of Temporary School Bus Passes dated January 17, 1992 and September 3, 1992.
5. Copies of the first page of a court decision by the Superior Court of California, County of Alameda, dated September 24, 2002, and a card from Remar USA Inc. Christian Outreach Ministry.
6. Copies of 2006 tax documents and earnings statements dated December 29, 2006 and March 23, 2007.
7. A copy of a Social Security statement indicating that the applicant has worked in the United States since 1994.

All but five of the earnings statements are dated prior to the qualifying dates to establish continuous residence and continuous physical presence. The earnings statement dated February 28, 2001, indicates the applicant may have been present in the United States prior to February 3, 2001. However, that document and the other earnings statements can not establish the applicant's continuous residence from February 13, 2001 and continuous physical presence from March 9, 2001 to the filing of the TPS application on July 23, 2007. The remaining earnings statements are dated August 7, 2001, and October 30, 2001. They are, therefore, of little or no probative value in determining the applicant's qualifying continuous residence and continuous physical presence. Similarly, the school bus passes indicate the applicant was present in the United States prior to the qualifying continuous residence and continuous physical presence dates. The Social Security statement indicates the applicant worked in the United States every year from 1994 until 2007, however, the Earnings Record section of the document appears to have been altered. 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). The remaining evidence presented is dated subsequent to the dates to establish qualifying continuous residence and continuous physical presence.

The applicant has not submitted sufficient evidence to establish his qualifying residence since February 13, 2001 and his continuous physical presence in the United States from March 9, 2001 through the date he filed the TPS application; July 23, 2007. 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 temporary protected status on these grounds will also be affirmed.

Beyond the director's decision, it is noted that the applicant only provided the final court disposition for the September 7, 2002 arrest which indicates the applicant was convicted of "Driving Under the Influence of any Alcoholic Beverage or Drug, or Under the Combined Influence of any Alcoholic Beverage and Drug", a misdemeanor. The record does contain a document from the Superior Court of California County of Santa Clara, which indicates an arrest was made but no complaint was filed. However, the document does not identify which arrest is being referred to. It is noted that in a November 1, 2007 letter, counsel states that the applicant was only charged with one "DUI." According to counsel, the applicant failed to appear in court and a bench warrant was possibly issued. Counsel contends that the applicant turned himself in to another county and that may be the cause of the confusion regarding several arrests in different counties. Nevertheless, the applicant has failed to provide the final court disposition for all of his arrests detailed above. It is also noted that counsel stated on appeal that the applicant was in "rehab" from July 25, 2004 to July 30, 2005 in Miami. However, no evidence was provided to support this claim. The record does contain a statement in Spanish from Remar USA, Inc that may relate to the claimed "rehab," but there was no English translation provided. Any document containing foreign language submitted to the USCIS shall be accompanied by a full English language translation, which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3). As the applicant failed to comply with the aforementioned, this statement cannot be considered in the rendering of this decision. The applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

It is noted that the director inadvertently stated in his decision that the applicant was from Honduras. However, the director applied the correct standards for El Salvadorans in rendering his decision.

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 temporary protected status 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.