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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

MA

[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER

Date: AUG 18 2010

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:

[REDACTED]

**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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

[REDACTED]

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 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: 1) establish he was eligible for late registration; 2) establish he had continuously resided in the United States since February 13, 2001; 3) establish he had been continuously physically present in the United States since March 9, 2001; and 4) submit the requested court documentation relating to his criminal record.

On appeal, counsel asserts that the applicant has additional evidence to show that he has continuously resided in the United States since February 13, 2001, and has been continuously physically present since March 9, 2001. Counsel states that the applicant has sufficient evidence that his criminal charges were dismissed.

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, 2012, upon the applicant's re-registration during the requisite time period.

An alien shall not be eligible for TPS if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception when the offense is defined by the state as a misdemeanor and the sentence actually imposed is one year or less, regardless of the term actually served. Under this exception, for purposes of 8 C.F.R. § 244 of the Act, the crime shall be treated as a misdemeanor. 8 C.F.R. § 244.1.

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under the term "felony" of this section. For purposes of this

definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 244.1.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC § 802). Section 212(a)(2)(A)(i)(II) of the Act.

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 to be addressed 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. The record reveals that the applicant filed his TPS application on August 20, 2001. As the applicant filed his TPS application during the initial registration period, the director's finding that the applicant had failed to establish eligibility for late registration will be withdrawn.

The second and third issues 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.

In an attempt to establish continuous residence and continuous physical presence in the United States, the applicant submitted the following:

- An affidavit notarized August 13, 2001, from [REDACTED], who attested to have known the applicant in Texas since 1999. The affiant also attested that the applicant now resides in his home at [REDACTED]
- Form 1040, U.S. Individual Income Tax, Form IT-1040, Ohio Income Tax Return, and Form IR-25, City (Columbus) Income Tax Return, for 2001.
- Form IR-22, City (Columbus) Income Tax Return for 2003.
- A letter dated July 29, 2002, from the Internal Revenue Service regarding the tax period ending December 31, 2000.
- A Social Security Statement reflecting the applicant's earnings for 1991 to 1999, 2001 and since 2003.

On appeal, counsel submits copies of documents that were previously issued to the applicant (Forms I-797C) and that were previously provided by counsel and the applicant. Counsel also submits two

receipts dated in 1998, an Application for Certification of Title dated March 22, 1999, an identification card issued by the Texas Department of Public Safety on February 9, 2001, and a Form SS-5, Application for a Social Security Card, dated February 9, 2001.

The fourth issue to be addressed is applicant's criminal history.

The FBI report dated September 20, 2006, reflects that on July 23, 1998, the applicant was arrested by the Indianapolis Police Department for possession of marijuana, and on December 4, 1998, for dealing marijuana/hashish and possession of marijuana.

The court documentation from the Marion County Superior Court of Indiana indicates that on November 30, 1998, the charges relating to the arrest on July 23, 1998, were dismissed. [REDACTED]

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

During the adjudication of the applicant's appeal, information came to light that adversely compromised the credibility of the applicant's claim. On July 1, 2010, the AAO sent a notice to the applicant which advised him of the inconsistent and contradictory information contained within the record. Specifically, additional court documentation from the Marion County Superior Court of Indiana indicated that on December 3, 1998, the Deputy Prosecutor Supervisor issued a Refile Form. On December 4, 1998, the applicant was charged with violating I.C. 35-48-4-10, dealing in marijuana and I.C. 35-48-1-11, possession of marijuana, both Class D felonies. [REDACTED]

[REDACTED] On April 26, 1999, an Order of Warrant was issued in Cause no. [REDACTED]

In addition, the applicant had presented contradictory documents for which no explanation had been provided. [REDACTED] in his affidavit, attested that the applicant has been residing with him in Irving Texas. In an affidavit dated January 7, 2008, which accompanied his motion to reopen in absentia order of removal before the Executive Office for Immigration Review, the applicant indicated that he resided in Irving Texas from 1999 to 2006 and he now resides in Columbus, Ohio. However, as evidence to establish continuous residence and continuous physical presence, the applicant indicated on his Forms IR-25 and IT-1040 to have been a full-time resident in Columbus, Ohio throughout 2001. In addition, the earnings reflected on the Social Security Statement for 2001 do not correspond with the earnings listed on the income tax returns.

The applicant was advised that it was incumbent upon him 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, 591-92 (BIA 1988).

The applicant was granted 30 days in which to provide certified court documentation indicating the final outcome of [REDACTED] along with substantial new evidence from credible sources to overcome, fully and persuasively, the inconsistencies

regarding his residence. The record shows that as of the date of this decision, the applicant has failed to respond to the AAO's notice. Therefore, the record must be considered complete.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the requisite periods. He has, thereby, 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 TPS application on these grounds will be affirmed.

The applicant has failed to provide any evidence revealing the final court disposition in Cause no. [REDACTED] detailed above. The applicant is ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the director's decision to deny the TPS application on this ground will also 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.

**ORDER:** The appeal is dismissed.