

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY

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

M1



FILE: [EAC 09 120 84813] Office: VERMONT SERVICE CENTER Date: **FEB 24 2010**

IN RE: Applicant: 

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

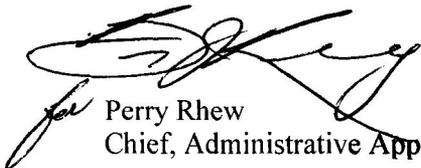
ON BEHALF OF APPLICANT:



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.

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 or reopen, as required by 8 C.F.R. §103.5(a)(1)(i).


Perry Rhew
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 it was determined that the applicant had been convicted of at least two misdemeanors in the United States. The director also found that the applicant had failed to establish: 1) he was eligible for late registration; 2) his qualifying continuous residence in the United States during the requisite period; and 3) his qualifying continuous physical presence in the United States during the requisite period.

On appeal, counsel asserts that the applicant has resided continuously in the United States since August 1, 2000. Counsel asserts that the charge of public indecency is not a misdemeanor as it falls under the exception clause. Counsel asserts that he is submitting conclusive evidence that the applicant is indeed eligible for the benefit sought.

An alien shall not be eligible for temporary protected status under this section 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. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

"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.

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.
- (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 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 September 9, 2010, 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).

The first issue to be addressed is the applicant's criminal history in the state of Tennessee.

The record reflects that on February 4, 2004, the applicant was convicted of indecent exposure, a violation of TCA 39.13.511, a Class B misdemeanor. The applicant was ordered to pay a fine.

The record also reflects that on June 15, 2004, the applicant was convicted of driving under the influence, a violation of TCA 55.10.401, a Class A misdemeanor. The applicant was ordered to pay a fine and served two days in jail.

According to the Tennessee Code Annotated 39-13-511(a)(3)(A), a first or second offense of indecent exposure is a Class B misdemeanor which is punishable only by a fine of five hundred dollars. Consequently, this conviction cannot be considered a misdemeanor for immigration purposes. As such, the applicant has not been convicted of two misdemeanors in the United States and, therefore, the director's finding will be withdrawn.

The second 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 reflects that the applicant's initial TPS application (WAC0116754600) was received on March 29, 2001. On March 1, 2004,¹ the Director, California Service Center, issued a Notice of Decision, denying the application because the applicant had not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. No appeal was filed from the denial of this application.

On February 4, 2005, the applicant filed a second TPS application (WAC0512775734) and indicated that he was re-registering for TPS. On March 6, 2006, the Director, California Service Center, denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. No appeal was filed from the denial of this application.

Service records reflect that on May 17, 2006, the applicant filed a third TPS application (EAC0623472404). On May 24, 2006, the application was rejected as it was improperly filed.

¹ The director, in denying the current application, noted that the initial application was denied on February 24, 2004.

On July 28, 2006, the applicant filed another TPS application (EAC0630172802) and indicated that he was filing for late registration. On October 30, 2007,² the director, denied the application because the applicant failed to establish that he was eligible for late registration and failed to establish qualifying continuous residence and qualifying continuous physical presence in the United States during the requisite periods. No appeal was filed from the denial of this application.

On October 8, 2007, and April 27, 2008, the applicant filed TPS applications (EAC0803272563 and EAC0821270177) and indicated that they were late registration filings. On April 1, 2008, and October 23, 2008, the director, denied each application because the applicant failed to establish that he was eligible for late registration and failed to establish qualifying continuous residence and qualifying continuous physical presence in the United States during the requisite periods. No appeals were filed from the denial of these applications.

On January 25, 2009, the applicant filed the current TPS application and indicated that it was a late registration filing. 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.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on June 24, 2009.

On appeal, counsel neither addresses the finding of the applicant's ineligibility as a late registrant nor provides any evidence to establish the applicant's eligibility as a late registrant. Counsel merely states that the applicant "should be granted T.P.S. under late initial registration."

As noted above, to qualify for late registration, the applicant must provide evidence that at the time of *the initial registration period* (March 9, 2001, to September 9, 2002) he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2). Based on the documents contained in the record, the applicant did not have an application or any relief from removal that was pending during the initial registration period. A TPS application filed during the initial registration period does not qualify as a change of status application and does not render the applicant eligible for subsequent late registration. Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

The third issue that will be addressed is 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.

At the time the applicant filed his initial application, he presented a letter from the pastor of Our Lady of Guadalupe attesting to the applicant's membership since August 1, 2000, and three receipts dated in November and December 2000 and January 2001.

² The director, in denying the current application, noted that the application was denied on January 16, 2007.

The letter, however, has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 244.9(a)(2)(v). Most importantly, the pastor does not explain the origin of the information to which he attests. The three receipts serve only to establish the applicant's continuous residence and continuous physical presence *prior to* the requisite periods.

At the time the applicant filed his TPS application on July 28, 2006, he presented an affidavit from [REDACTED] who indicated that he had known the applicant in El Salvador since 1999. The affiant attested to the applicant's residence in California since 2000. The applicant also presented, four pay stubs issued from November 26, 2000 to February 10, 2001, and three earnings statements issued in October 2002 to December 2002.

At the time the applicant filed his current TPS application, he submitted copies of documents that were previously provided.

The affidavit from [REDACTED] lacks probative value as it fails to provide any details regarding the nature of the affiant's relationship with the applicant or the basis for his continuing awareness of the applicant's residence, especially since the affiant was residing in New York during the periods in question. The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence seriously detracts from the credibility of his claim. The pay stubs serve only to establish the applicant's continuous residence and continuous physical presence *prior to* the requisite periods. The earnings statements are all dated subsequent to the dates to establish the applicant's continuous residence and continuous physical presence in the United States during the qualifying period.

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The applicant 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 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.