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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

M₁

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: JUN 02 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:

SELF-REPRESENTED

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

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 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) been continuously physically present in the United States since March 9, 2001; and 3) was eligible for late registration. The director also determined that the applicant had been convicted of two misdemeanors. The director, therefore, denied the application.

On appeal, the applicant states that he is eligible for late initial registration because he had a pending asylum application. The applicant also contends that he has submitted overwhelming evidence that he has been continuously physically present in the United States since February 13, 2001.

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 Secretary, Department of Homeland Security (Secretary), is eligible for TPS 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 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.

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.

An alien shall not be eligible for TPS 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).

8 C.F.R. § 244.1 defines "misdemeanor:"

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.

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 February 16, 2009.

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 United States 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 in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding confirms that the applicant filed his application after the initial registration period 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 May 1, 2009, 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 of his nationality and identity and 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. The applicant, in response, provided evidence of his nationality and identity. He did not present evidence of his continuous residence and continuous physical presence during the qualifying period, or his eligibility for late registration. Therefore, the director denied the application.

On appeal, the applicant states that he is eligible for late initial registration because he had applied for political asylum. While a pending asylum application technically rendered him eligible for late registration, the regulation at 8 C.F.R. § 244(g) also requires a late registration application to be filed within a 60-day period immediately following the expiration or termination of conditions described in 9 C.F.R. § 244.2(f)(2). USCIS records indicate that the asylum application was administratively closed and withdrawn on June 9, 2000. In order to be eligible for late initial registration for TPS, the applicant had to file his application on or before August 9, 2000. 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 May 1, 2009, to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. In response, the applicant failed to provide any additional evidence.

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:

1. Copies of a Salvadoran passport issued on October 20, 2008 in Los Angeles, and employment authorization cards issued on June 24, 1996, June 25, 1997, and June 25, 1998, and an employment authorization card with an illegible issue date.
2. Copies of hand-written rent receipts dated from January 1, 2001 to September 1, 2007.
3. Copies of a earnings statement dated May 23, 2001, February 28, 2002, March 11, 2002, March 26, 2002, July 9, 2002, November 2, 2003, August 13, 2004, October 25, 2004, March 5, 2006, April 10, 2006, April 24, 2006, May 8, 2006, June 30, 2006, August 14, 2006, August 28, 2006, August 29, 2006, October 2, 2006, October 30, 2006, April 2, 2007, April 30, 2007, June 25, 2007, September 17, 2007, February 18, 2008, February 19, 2008, March 31, 2008, April 14, 2008, April 28, 2008, May 12, 2008, October 13, 2008, October 27, 2008, and December 8, 2008.
4. Copies of a monthly statement from Southern California Gas Company for a billing period from November 2, 2001 to December 6, 2001; a City of Los Angeles Municipal Services monthly statement dated December 12, 2001; California Identification Cards issued on December 12, 2001 and November 18, 2002; a Los Angeles Department of Water and Power monthly statement dated May 9, 2002; and a Notice of Pending Lien Sale dated July 5, 2005.

The passport establishes the applicant's identity and nationality. The employment authorization cards only serve to establish the applicant's presence in the United States prior to the requisite dates. The hand-written rent receipts from January 2001 to October 2001 are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of

contemporaneous evidence to support these assertions; however, no such evidence has been provided. Furthermore, USCIS records contain a Form G-325A, Biographic Information, and a Form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Resident, indicating a different address during the period in which the applicant provides receipts for rent. This discrepancy has not been satisfactorily explained. 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 is dated subsequent to the dates to establish continuous residence and continuous physical presence in the United States.

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 to the date the application was filed. 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 also be affirmed.

The fourth issue in this proceeding is whether the applicant has been convicted of two misdemeanors. The record reveals the following offenses:

- (1) On September 9, 2002, the applicant was arrested by the Los Angeles, California Police Department for violating section 12500(a) of the California Vehicle Code, "driving without a license." [REDACTED]
- (2) On January 8, 2007, the applicant was arrested by the Norwalk, California Police Department for violating section 23152(a) of the California Vehicle Code, "DUI alcohol/drugs," and section 23152(b) of the California Vehicle Code, "DUI alcohol 0.08 Percent." [REDACTED]

Pursuant to a notice dated May 1, 2009, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant, in response, provided the requested court documents. According to the final court dispositions, on November 22, 2002, the applicant pled nolo contendere and was convicted of driving without a license, a misdemeanor, and on April 11, 2007, the applicant pled nolo contendere and was convicted of driving under the influence with .08 percent or more alcohol in the blood, a misdemeanor.

On appeal, the applicant states that his first misdemeanor should be considered an infraction because it was basically a civil matter. However, section 40000.11(b) of the California Vehicle Code specifically states that a violation of section 12500(a) is a misdemeanor, and not an

infraction. The applicant is, therefore, ineligible for TPS because of his two misdemeanor convictions. 8 C.F.R. § 244.4(a).

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.