

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

M1

[REDACTED]

FILE: [REDACTED]
[EAC 08 107 70342]

Office: VERMONT SERVICE CENTER

Date: **MAY 05 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:

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 (AAO) on appeal. The appeal will be dismissed. The AAO will return the matter for further action by the director.

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 establish: 1) his nationality; 2) he was eligible for late registration; 3) he had continuously resided in the United States since February 13, 2001; and 4) he had been continuously physically present in the United States since March 9, 2001.

On appeal, counsel submits evidence to establish the applicant's nationality, and his continuous residence and physical presence in the United States during the requisite periods.

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, 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 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 has established his nationality.

At the time the applicant filed his TPS application, he provided a copy of his birth certificate with English translation as evidence to establish his nationality. The birth certificate, however, was not accompanied by a photo identification as required by 8 C.F.R. § 244.9(a)(1). On appeal, counsel provides a copy of the applicant's El Salvadoran passport issued in Long Island, New York on

March 12, 2008. Accordingly, the applicant has established that he is a national of a foreign state that is currently eligible for TPS. Therefore, the director's finding on this issue will be withdrawn.

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.

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

- A letter dated May 2, 2009, from [REDACTED] in Hempstead, New York, who indicated that the applicant has been a registered parishioner of the church since February 15, 2000.
- A letter dated May 7, 2009 from [REDACTED] in Rockville Centre, New York, who indicated the applicant completed a self-esteem class in May 2000 and that he continues to participate as a adult leader in the ministry.
- Certificates of Participation issued on May 12, 2000, and June 24, 2003.
- Several certificates issued in the Spanish language.
- A letter dated September 12, 2007 from [REDACTED] coordinator for the County of Nassau (New York), who indicated that the applicant was a student during the 2001 winter semester (January 2001 through June 2003). The affiant attested to the applicant's residence at [REDACTED] during that period.
- Two international money order receipts dated September 10, 2000 and December 10, 2000, and a letter dated May 6, 2009, from a representative of Urgente Express of Freeport, New York, who indicated that its office has been doing business with the applicant since January 5, 2000.
- An affidavit notarized May 6, 2009, from [REDACTED] who attested to the applicant's arrival in the United States on January 5, 2000.
- Wage and Tax Statements for 2004 through 2008 and an unsigned 2003 Form 1040, U.S. Individual Income Tax Return.
- A document dated May 14, 2008, from the Nassau County Social Services.

On appeal, counsel submits copies of the documents that were previously provided along with:

- A medical document dated February 1, 2001, from the Nassau University Medical Center regarding the applicant's visit on the same day.
- A medical billing statement dated March 1, 2001, from the Nassau Health Care Corporation.
- Earnings statements for the pay periods ending July 7, 2001 and August 1, 2001.

- A receipt dated December 1, 2001, from El Cairo Express; three envelopes postmarked in 2002 from Urgente Express; and international money order receipts dated December 7 and 15, 2001
- Documents dated from February 2003 through 2009.

The applicant has submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the periods. He has, thereby, established that he has met the criteria described in 8 C.F.R. §§ 244.2(b) and (c). Therefore, the director's findings on these issues will also be withdrawn.

The fourth issue to be addressed is whether the applicant is eligible for late registration.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial application (EAC0224751642) on July 18, 2002. The Director, Vermont Service Center, denied the application on February 20, 2004. The applicant filed an appeal from the denial of that application. On November 7, 2005, the AAO remanded the case because the director's decision failed to explain in writing the specific reasons for the denial as required in 8 C.F.R. § 103.3(a)(1)(i). According to the electronic records, the proceedings were reopened and denied again on January 11, 2006. On June 24, 2009, the proceedings were reopened again. On July 6, 2009, the Director, Vermont Service Center, denied the application as the applicant failed to establish his nationality, late registration, continuous residence and continuous physical presence.

The applicant filed a second TPS application (WAC0513482977) on February 11, 2005, and indicated that he was re-registering for TPS. On August 16, 2005, the director, California Service Center, denied the application 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 filed an appeal from the denial of that application. The AAO, in dismissing the appeal on January 29, 2007, concurred with the director's findings.

The applicant filed the current application on January 14, 2008, and indicated he was filing for late registration. 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.

On November 28, 2008, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant, however, failed to respond to the notice. On April 14, 2009, the director denied the application due to abandonment. The applicant filed a motion to reopen and only submitted evidence to establish his continuous residence and continuous physical presence in the United States. On July 6, 2009, the director determined that the applicant had failed to establish he was eligible for late registration and denied the application.

On appeal, counsel for the applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Having filed an application

for TPS during the initial registration period does not render an alien eligible for late registration under 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS on this issue will be affirmed.

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.

Finally, as noted above, on July 6, 2009, the director also issued a separate denial notice for the applicant's initial TPS application (EAC0224751642). Although the decision was mailed to the applicant at his address of record, it appears that this decision is defective in that proper service was not made to counsel as required in 8 C.F.R. § 103.2(b)(19).¹

Accordingly, the matter will be returned so that the director can reissue a Notice of Decision relating to the initial application and mail it to counsel. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

ORDER: The appeal is dismissed. The matter is returned for further action by the director.

¹ Where the applicant or petitioner has authorized representation pursuant to § 103.2(a), that representative shall also be notified.