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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: JUL 27 2011 Office: VERMONT SERVICE CENTER

FILE:

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: 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 \$630. 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and the case is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of El Salvador who was granted Temporary Protected Status (TPS) on December 13, 2003. The director withdrew the applicant's TPS, after determining that the applicant had failed to submit the required annual re-registration application for each period subsequent to the approval of his initial application. The director also withdrew the applicant's TPS because he failed to establish that he had been continuously physically present in the United States since March 9, 2001.

The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1).

Section 244(c)(3) of the Act, and the related regulations in 8 C.F.R. §§ 244.14(a) and 244.17(c), provide that the applicant's TPS may be withdrawn if the alien has not remained continuously physically present in the United States from the date the alien first was granted TPS, and if the alien fails, without good cause, to register annually, at the end of each 12-month period after the granting of such status, in a form and manner specified by the Secretary, Department of Homeland Security (Secretary).

An alien who has been granted TPS must register annually with the U.S. Citizenship and Immigration Services designated office having jurisdiction over the alien's place of residence. 8 C.F.R. § 244.17(a).

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.

Persons applying for TPS offered to El Salvadorans must demonstrate 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.

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

The first issue to be addressed is the applicant's failure to re-register during the required periods.

On December 6, 2010, the director issued a notice advising the applicant that his TPS would be withdrawn and his re-registration application would be denied unless he provided good cause for failing to re-register during the required registration periods.¹ The director subsequently withdrew the applicant's TPS on March 21, 2011, after it was determined that the applicant had failed to provide a reason why he could or did not re-register for TPS subsequent to the approval of his application.

On appeal, the applicant asserts that he has never left the United States and "I overlooked the allowed time to apply for renewal of my TPS since I was thinking return to my homeland, since I was experiencing sickness that creates me a stay of anxiety and afraid of something may happened to me and I was alone in this area."

The applicant, however, has not provided any credible documentation to establish a finding of his failure to register for good cause. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Consequently, the director's decision to withdraw the applicant's TPS on this ground will be affirmed.

The second issue to be addressed is whether the applicant maintained continuous physical presence in the United States.

The director, in his notice dated December 6, 2010, requested the applicant to submit evidence establishing continuous physical presence in the United States since March 9, 2005. The applicant, in response to that notice and on appeal, provided the following:

- A letter dated January 4, 2011, from [REDACTED], New Jersey, who indicated that the applicant has been in his employ as a construction worker since March 1999.
- A letter dated January 4, 2011, from [REDACTED] New Jersey, who indicated that he has known the applicant for approximately six years and attested to the applicant's residence in Plainfield, New Jersey. The affiant indicated that the applicant had not departed from the United States since he met the applicant and that he sees the applicant on a daily basis.
- A letter dated January 4, 2011, from [REDACTED] who indicated that he first met the applicant on May 15, 2004, and he has been a good friend of the applicant since that time. The affiant indicated that he sees the applicant almost on a daily basis and attested to the applicant's employment with [REDACTED] at E& P Construction Company in Plainfield, New Jersey.

¹ January 7, 2005 through March 8, 2005; July 3, 2006 through September 1, 2006; August 21, 2007 through October 22, 2007; and October 1, 2008 through December 30, 2008.

- An affidavit from [REDACTED] of Manassas, Virginia, who indicated that he has known the applicant for eight years, that he stays in contact with the applicant on a weekly basis via the telephone, and that the applicant has been continuously present in the United States. The affiant attested to the applicant's residence in Plainfield, New Jersey.
- An affidavit from [REDACTED] who indicated that she has known the applicant for approximately eight years. The affiant indicated that the applicant has resided in Plainfield, New Jersey and has never left the United States since his arrival.
- An affidavit from [REDACTED] New Jersey, who affirmed the applicant's continuous presence in the United States for over ten years. The affiant attested to the applicant's residences in Plainfield, New Jersey since 2000 and indicated that he has been in contact with the applicant on a weekly basis.
- Documentation from the Internal Revenue Service (IRS) dated February 21, 2011, regarding the 2010 tax year.
- Wage and Income Transcripts from the IRS for the 2003, 2004 and 2005 tax years.
- Forms 1040, U.S. Individual Income Tax Return, for 2005 through 2009 signed July 8, 2010.
- A social security statement dated August 30, 2010, reflecting zero earnings for 2005 and 2006, \$555.00 for 2007, \$1086.00 for 2008 and \$4587.00 for 2009.

[REDACTED] indicated in his letter that the applicant has been in his employ since March 1999. However, except for the wage and income transcripts reflecting the applicant's employment for 2003 through 2005, no credible evidence has been provided to corroborate the remaining years. The income tax returns for 2006 through 2009 have little evidentiary weight or probative value as they were not filed during the respective time period. Like a delayed birth certificate, the late filing of tax returns years after the claimed transactions raise serious questions regarding the truth of the facts asserted. Cf. *Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991)(discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings). Furthermore, the letter from [REDACTED] raises questions to its credibility as at the time the applicant filed his initial TPS application in 2002, he presented employment letters from different employers, and [REDACTED] in his letter dated June 6, 2003, only attested to having known the applicant since March 2000.

The applicant claims that he has been continuously physically present in the United States since his arrival; however, no evidence such as rent receipt, lease agreement, utility statements were provided to support his claim. Casting doubt to the remaining affiants' claims that the applicant has been continuously physically present in the United States is the fact that the letters and affidavits from the affiants do not provide detailed accounts of an ongoing association establishing a relationship under which the affiants could be reasonably expected to have personal knowledge of the applicant's residence, activities and whereabouts during the requisite period. To be considered probative, an affiant's affidavit must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. The affidavit must contain

sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. The affidavits from the affiants do not provide sufficient detail to establish that they had an ongoing relationship with the applicant that would permit them to know of the applicant's whereabouts and activities throughout the period in question.

The applicant has provided sufficient evidence to establish his continuous physical presence in the United States through 2005; however, he has not submitted sufficient evidence to establish his continuous physical presence in the United States since 2006. He has, thereby, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to withdraw TPS for failing to establish continuous physical presence in the United States since March 9, 2001, will also be affirmed.

Assuming, arguendo, the applicant had submitted sufficient evidence establishing his continuous physical presence; he would remain ineligible for TPS due to his failure to re-register during the required registration periods. 8 C.F.R. § 244.17(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.