

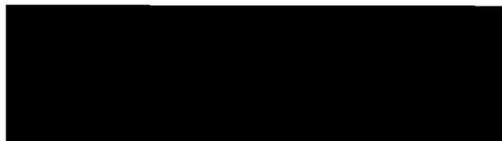
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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DATE:

Office: VERMONT SERVICE CENTER

FILE:



MAY 09 2011

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:

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 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 establish he was eligible for late registration. The director also found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, counsel submits letters from three acquaintances in an attempt to establish the applicant's 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, 2012, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. 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 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 in this proceeding is whether the applicant is eligible for late registration.

The record reveals that the applicant filed his initial application (SRC0324457032) with USCIS on September 3, 2003. On February 19, 2004, the Director, Texas Service Center, denied that application due to abandonment. No motion was filed from the denial of that application.¹

The applicant filed the current TPS application on August 25, 2010. The applicant submitted copies of the employment authorization cards of his parents.

The director determined that the applicant had failed to establish he was eligible for late registration as he was no longer a child at the time of filing his current TPS application, and that he failed to file said application within 60 days of his 21st birthday.² Accordingly, the director denied the application on November 19, 2010.

Section 101(b)(1) of the Act defines a child as an unmarried person under twenty-one years of age. The applicant did not file a perfected application when he qualified as a child as noted above. As he failed to file a perfected application when he was a child, subsection (g) allowed him to file a TPS application for late registration within 60 days of his 21st birthday. The applicant filed his current TPS application over four years after his 21st birthday. Because the applicant can no longer be considered a child, he is ineligible for late registration under 8 C.F.R. § 244.2(f)(2)(iv). The applicant has not established that he met any of the other criteria for late registration. Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

It is noted that on appeal counsel does not address the applicant's ineligibility for late registration.

The second and third issues to be addressed 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.

Throughout the application process, the applicant, in an attempt to establish continuous residence and continuous physical presence in the United States, submitted:

- A birth announcement from [REDACTED] in [REDACTED]
- An affidavit from [REDACTED] who indicated that he has known the applicant since late 2000, and he has worked for the applicant on various occasions since August 2000.
- Affidavits from the applicant's parents, who indicated that the applicant has been residing in the United States since 2000.

¹ A denial due to abandonment may not be appealed, but an applicant may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

² The applicant was born on February 17, 1985.

- A letter dated June 27, 2010, from a representative of the Department of Student Services in Fort Smith, Arkansas, who indicated that the applicant was enrolled in Northside High School from September 23, 2002 through June 3, 2005.
- A copy of his high school diploma awarded on May 27, 2005, from Northside High School in Fort Smith, Arkansas.
- His son's certificate of birth, who was born on October 18, 2008.
- A letter from a representative of Immaculate Conception Catholic Church in Fort Smith, Arkansas, who indicated that the applicant has been a member of its parish since November 2006.
- An affidavit from an individual with an indecipherable first name, who indicated that the applicant mows his/her yard every three weeks. The affiant attested to the moral character of the applicant.
- An affidavit from an individual with an indecipherable last name, who attested to the applicant's moral character and to having known the applicant since December 2002.
- A copy of his immunization record from Arkansas Department of Health reflecting that the applicant had received vaccinations from September 16, 2002 through March 10, 2003.
- A document written in the Spanish language without the required English translation.

The director, in considering the documents presented, noted that they did not contain sufficient information and corroborative documents to support the applicant's claim that he was in the United States prior to 2002. The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on November 19, 2010.

On appeal, counsel submits:

- A letter from [REDACTED] who indicated that she has personal knowledge that the applicant has been residing in Fort Smith, Arkansas since 2000. The affiant indicated that the applicant assisted her in cleaning houses for approximately 13 months.
- A letter from [REDACTED] who indicated that the applicant has been registered with its soccer league since December 2000.
- A letter from [REDACTED] who attested to the applicant's presence in the United States since 2000. The affiant indicated that he resided next to the applicant's family when they first moved to Fort Smith, Arkansas.

The sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 244.9(b). Casting doubt to the applicant's claim that he resided in the United States prior to 2002 is the fact that the 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. Except for the affidavit from Ms. Benjamin, 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 requisite period.

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