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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



M₁

DATE: **MAR 05 2012** 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. § 1254a

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 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 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 had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant submits evidence in an attempt to establish continuous residence and continuous 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.

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 September 9, 2013, 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 record contains a Form I-589, Application for Asylum and Withholding of Removal, filed on July 9, 2004, which requested that the applicant be added as a dependent. However, it was later determined that the applicant was not related to the individual who was listed as the principle alien.¹

On September 3, 2010, the applicant filed a TPS application and indicated that he was re-registering for TPS.

On February 2, 2011, the applicant was requested to submit evidence establishing that he had previously filed a TPS application or had been approved TPS. The applicant, in response, provided

¹ During removal proceedings held on March 5, 2009, the applicant withdrew the Form I-589.

a copy of a TPS application for A [REDACTED] which was received by USCIS on April 30, 2001. The applicant's name was listed as a child of [REDACTED]

The director, in denying the application, noted that [REDACTED] indicated on the TPS application that the applicant was residing in El Salvador.² The director determined that the applicant was not residing in the United States during the initial registration period and, therefore, was not eligible for TPS.

On appeal, the applicant submits:

- A Form 1040, U.S. Individual Income Tax Return, and Form 540, California Residence Income Tax Return, for 2010.
- A copy of a Certificate of Appreciation dated June 15, 2001, from El Centro De Amistad.
- A document written in the Spanish language.
- A letter dated June 21, 2011, from [REDACTED], community worker at Central American Refugee Center in Los Angeles, California, who indicates that the applicant was a volunteer at the facility from February 10, 2001, to September 2001.
- An affidavit notarized June 30, 2011, from [REDACTED] who indicate that the applicant has resided in their home at [REDACTED] since September 1998. The affiants indicate that from September 1998 to July 2004, they provided the applicant room and board as he was a minor at the time.

The AAO does not view the documents discussed above as substantive enough to support a finding that the applicant continuously resided since February 13, 2001 and was continuously physically presence since March 9, 2001 in the United States. Specifically:

1. No explanation has been provided why the TPS application for [REDACTED] listed the applicant residing in El Salvador in 2001.
2. The Forms 1040 and 540 have little probative value as they have not been certified as being filed pursuant to 8 C.F.R. § 244.9(a)(2)(i).
3. The Certificate of Appreciation dated June 15, 2001, lacks probative value and evidentiary weight as no corroborating evidence has been provided.
4. The document written in the Spanish language cannot be considered as it was not accompanied by a full English language translation as required in 8 C.F.R. 103.2(b)(3). In addition no corroborating evidence was submitted to support the document.

² [REDACTED] TPS applications filed on October 1, 2002, and August 24, 2003, also listed the applicant's residence in El Salvador.

The fact that a Form I-589 was filed indicating the applicant to be the child of another individual raises questions as to the credibility of the applicant's new claim to be the child of [REDACTED]

As conflicting information have been provided, it is reasonable to expect an explanation from [REDACTED] attesting to his paternity as well to the applicant's continuous residence, continuous physical presence and date of entry into the United States. No statement from [REDACTED] has been submitted to resolve the inconsistencies in the record.

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 applicant has not submitted credible evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the requisite periods. He has, thereby, 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 be affirmed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Although the record contains a copy of a birth certificate with English translation, it was not accompanied by a photo identification, passport or any national identity document from the applicant's country of origin bearing photo and/or fingerprint to establish his nationality and identity, as required under 8 C.F.R. § 244.9(a)(1). Therefore, the application must be denied on this basis as well.

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.