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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: **MAR 19 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 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, the applicant asserts that he was not aware that he had to file for TPS once his asylum application was terminated on July 20, 2004. The applicant claims that he thought he had 60 days after the expiration of his employment authorization card. The applicant states, “[p]lease take consideration of the misunderstanding; I never have an intention to contradict your rules but it was only a misunderstanding.”

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 September 9, 2013, upon the applicant's re-registration during the requisite time period. The applicant submits earnings statements, wage and tax statements, and income tax returns to establish his residence and physical presence in the United States.

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 and second 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.

The AAO concludes that a review of the documents submitted throughout the TPS application process and on appeal is sufficient, reasonable, substantial, and probative to support a claim of continuous residence and continuous physical presence in the United States during the requisite periods. Accordingly, the director's decision to deny the application for TPS on these grounds will be withdrawn.

The third issue in this proceeding is whether the applicant is eligible for late registration.

USCIS records reflect that on June 9, 1995, the applicant was a dependent on a Form I-589, Application for Asylum and Withholding of Removal, filed under the principal applicant, his mother. The Form I-589 was administratively closed on July 20, 2004, as the applicant's mother was granted adjustment of status to lawful permanent resident (LPR, class of admission Z15).

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 record reflects that the applicant filed his initial TPS application ( [REDACTED] ) on November 4, 2004. On March 1, 2005, the Director, Nebraska Service Center, denied the application because the applicant: 1) did not file his TPS application within 60-days following the expiration/termination of his asylum application; 2) failed to establish continuous residence in the United States since February 1, 2001; and 3) failed to establish continuous physical presence in the United States since March 9, 2001. On April 29, 2005, the Kansas City District Office received the Form I-290B, Notice of Appeal or Motion. The appeal from that initial application will be addressed under separate cover.

The applicant filed a re-registration application [REDACTED] on February 9, 2005. On March 20, 2006, the Director, California Service Center, denied the re-registration 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 the current TPS application on July 27, 2010.

On February 11, 2011, the director denied the current application because the applicant had not provided any new and compelling evidence that overcame the reason(s) for denying the initial TPS application.

In *Matter of N-C-M-*, 25 I&N Dec. 535 (BIA 2011), the BIA held that in order to qualify for late initial registration for TPS, an applicant filing as the "child of an alien currently eligible to be a TPS

registrant” must establish that he or she was a “child” only “at the time of the initial registration period,” not at the time when the application for late initial registration is filed. It was also held that the regulation at 8 C.F.R. § 244.2(g) does not apply to a child who seeks late initial registration for TPS benefits.

In view of the BIA’s decision, the applicant was not required to file an application for late registration within a 60-day period immediately following the withdrawal of the asylum application on July 20, 2004.

Nevertheless, in order to qualify for late registration, the applicant must be a child of an alien currently eligible to be a TPS registrant. Although the applicant has established that during the initial registration period, he was a child and a derivative of his mother’s asylum application, he has not established that his mother is currently eligible to be a TPS registrant. The AAO is bound by the clear language of the regulation and statute and lacks the authority to change them. Therefore, the finding of the director that the applicant had failed to establish eligibility for late registration 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.

**ORDER:** The appeal is dismissed.