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U.S. Citizenship
and Immigration
Services

[Redacted]

DATE:

APR 18 2013

Office: VERMONT SERVICE CENTER

FILE:

[Redacted]

IN RE:

Applicant:

[Redacted]

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254a

ON BEHALF OF APPLICANT:

[Redacted]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting 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 denied the application because the applicant had failed to establish his: 1) identity; 2) continuous residence since February 13, 2001; and 3) qualifying continuous physical presence since March 9, 2001.

On appeal, counsel asserts that the director focused on strenuous matters that do not have anything to do with the applicant's eligibility for TPS. Counsel states that the social security printout establishes the applicant's presence in the United States prior to the eligibility period and "also shows his intention to reside in the U.S. and establish a domicile in the United States."

Counsel indicates at Part 2 on the appeal form that a brief and/or additional evidence would be submitted to the AAO within 30 days.¹ However, more than a year later, no additional correspondence has been presented by counsel or the applicant. Therefore, the record must be considered complete.

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

¹ Every appeal submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. 8 C.F.R. § 103.2(a)(1). The Form I-290B instructs the applicant to submit a brief and additional evidence to the AAO within 30 days of filing the appeal.

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- (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 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 in this proceeding is whether the applicant is eligible for late registration.

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. If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

The record reflects that a Form I-589, Application for Asylum and Withholding of Removal, was filed on July 19, 1993. On September 17, 2004, the asylum application was administratively closed as the applicant failed to appear for his interview. The applicant filed a Form I-485, Application to Register for Permanent Residence, on September 7, 1999. On September 24, 2002, the application was denied due to lack of prosecution.

The applicant filed his TPS application on September 13, 2010.

On September 6, 2011, the applicant was informed that he did not file the TPS application within 60 days following the expiration or termination of the Forms I-589 or I-485. 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, in response, submitted copies of notices (Form I-797C) regarding the filing of his Forms I-485 and I-765, Application for Employment Authorization.

The director, in denying the application on December 30, 2011, concluded that the applicant had failed to establish he was eligible for late registration as the Form I-821 was not filed within 60 days following the expiration or termination of the Forms I-589 or I-485.

Administrative closing of a case does not result in a final order. It is merely an administrative convenience which allows the removal of cases from the calendar in appropriate situations. *See Matter of Gutierrez-Lopez*, 21 I&N Dec. 479 (BIA 1996). Therefore, it is concluded that the applicant qualifies for late initial registration pursuant to 8 C.F.R. § 244.2(f)(2)(ii).

Accordingly, the director's conclusion that the applicant had failed to establish his eligibility for late registration will be withdrawn.

On September 6, 2011, the applicant was also informed that he had provided contradicting documents in an attempt to establish his identity. Specifically:

- The birth certificate with a date of registry of July 24, 1968, indicates the applicant's name as [REDACTED] born [REDACTED] and that his parents' names are [REDACTED] and [REDACTED]
- The birth certificate with a date of registry of April 29, 1969, indicates the applicant's name as [REDACTED] born [REDACTED] and that his parents' names are [REDACTED] and [REDACTED]. An amendment to this birth certificate dated November 6, 1991 indicates that the applicant is known as [REDACTED] and [REDACTED]
- On his Forms I-589 and I-821, the applicant indicated that he was not known by any other name(s).²

The applicant was requested to submit an explanation regarding the use of the above names and an identity document. The applicant was advised due to the above discrepancies only original documents would be sufficient. In response, the applicant did not address the discrepancies regarding the different names in the birth certificates and he did not provide an original identity document.

Applicants shall submit all documentation as required in the instructions or requested by USCIS. 8 C.F.R. § 244.9(a). USCIS may, at any time, request submission of an original document for review. Failure to submit the requested original document by the deadline may result in denial of the underlying benefit request. 8 C.F.R. § 103.2(b)(5).

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).

On appeal, the applicant has failed to address the above matter in order to explain or justify the name discrepancies and he has failed to submit an original identity document. Therefore, the reliability of the remaining evidence offered by the applicant to establish the residence and physical presence requirements is questionable. 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.

² On his Form G-325A, Biographic Information, that accompanied the Form I-485, the applicant listed [REDACTED] and [REDACTED] as other names used.

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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.