



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **AUG 28 2013**

Office: VERMONT SERVICE CENTER

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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
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 qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, counsel asserts that the director's decision was based on misapplication of the law or evidence. Counsel acknowledges that the TPS application was filed late, but requests that it be accepted because the applicant was given "ineffective assistance of a person [the applicant] believed to be an attorney at the time of initial filing for TPS for El Salvador in 2001." Counsel stated that the initial TPS application was filed late in 2003 by [REDACTED] who is not and never has been an attorney.

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, 2015, 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 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.

A review of the evidence submitted throughout TPS proceedings, on appeal, and in removal proceedings may be accorded substantial evidentiary weight and is sufficient to meet the applicant's burden of proof of continuous residence and continuous physical presence in the United States during requisite periods. The applicant has, thereby, established that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Therefore, the director's decision to deny the application on these grounds will be withdrawn.

The third 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.

The record reflects that the applicant filed his initial TPS application [REDACTED] on September 5, 2003. On March 11, 2004, a notice was issued requesting the applicant to submit evidence establishing late registration eligibility. On April 29, 2004, the Director, Texas Service Center, denied the application due to abandonment. No motion was filed from the denial of that application.¹

Contrary to counsel's assertion on appeal, both notices were sent to the applicant's address of record. The record contains no evidence that either notice was sent to Ms. Pairazaman or that the notices were returned as undeliverable.

The applicant filed a TPS application [REDACTED] on February 25, 2005 and indicated on the application that he was re-registering for TPS. On September 9, 2005, the Director, California Service Center, denied the re-registration application because the applicant's initial TPS application [REDACTED] had been denied on April 29, 2004, and the applicant was not eligible to apply for re-registration for TPS.

A removal hearing was held on April 26, 2006 and the alien was ordered removed *in absentia*. The applicant filed a motion to reopen, which was granted by an immigration judge on May 15, 2008.² On September 15, 2011, an Order was issued by an immigration judge terminating the case without prejudice.

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 Although the motion was untimely filed, the Court found that the applicant had established that he failed to appear because he did not receive proper notice.

The applicant filed a TPS application ([REDACTED]) on October 21, 2007 and indicated on the application that he was re-registering for TPS. USCIS records indicate that the re-registration application was denied on March 21, 2008, as the applicant's initial TPS application had been denied and he was not eligible to apply for re-registration for TPS.

The applicant filed the current TPS application on January 27, 2012.

Citing 8 C.F.R. § 244.2(f)(2)(iv), counsel, on appeal, asserts that the applicant was eligible for late registration as a child of an alien currently eligible to be a TPS registrant. Counsel, however, has not provided any evidence establishing that either parent has filed for TPS and is currently a TPS registrant.

Counsel, on appeal, asserts that the applicant has filed a formal complaint to the [REDACTED] Association; that [REDACTED] has not responded to attempts to contact her regarding this matter; and that the [REDACTED] has informed this counsel that it will conduct an investigation of the matter.

Without documentary evidence to support the claims, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Assuming, arguendo, the individual is/was an attorney, any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard; (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond; and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). No evidence has been submitted confirming that Ms. Pairazaman has been notified of the incompetency claim, or evidence demonstrating that a complaint, based upon the allegations, has been filed with the appropriate disciplinary authorities.

The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish his 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.