



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JUL 23 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 (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
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 qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, counsel asserts that the applicant had “already submitted documents, statements about his TPS application and that he filed the initial application.” Citing *Vera-Villegas v. INS*, 330 F.3d 1222 (9th Cir. 2003), counsel states that statements and affidavits are recognized form of evidence.

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 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 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 AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record reflects that the applicant filed his initial TPS application [REDACTED] on November 30, 2001. On August 16, 2002, the Director, California Service Center, denied the application due to abandonment. No motion was filed from the denial of that application.¹

The applicant filed the current TPS application on March 5, 2012.

On July 2, 2012, 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, only provided documents relating to his residence and physical presence in the United States. The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on September 24, 2012.

On appeal, the applicant neither addresses the finding of his ineligibility as a late registrant nor provides any evidence to establish his eligibility as a late registrant. To qualify for late registration, the applicant must provide evidence that at the time of *the initial registration period* (March 9, 2001 through September 9, 2002) he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2). Having an application for TPS pending during the initial registration period does not render an alien eligible for late registration. The provisions for late registration were not created to allow aliens who had abandoned their initial applications to circumvent the normal application and adjudication process. Rather, these provisions were created in order to ensure that TPS benefits were made available to aliens who did not register during the initial registration period for the various circumstances specifically identified in the regulations.

The applicant has not submitted evidence that he has met one of those provisions outlined 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.

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.

On July 2, 2012, the applicant was also requested to submit evidence establishing his continuous residence and continuous physical presence in the United States. The applicant, in response, indicated that he did not receive any correspondence regarding his initial TPS application as he moved from his address of record [REDACTED], Nevada) to [REDACTED] California in 2001. The applicant indicated that from 2001 to 2006 he was employed at a construction company named Franco and had filed tax returns during those years; that he was disabled on July 8, 2006 and received disability payments for two years; that he did not work and did not file taxes during his

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).

disability; that he does not have any documents to establish his residence in the United States since 2001 as he and his children threw them away; and that the only documents he has are those given to him by a doctor at the time of his injury.

It is noted for the record that there is no evidence that the applicant had put in a change of address with USCIS and the notice was not returned by the U.S. Postal Service as undeliverable.

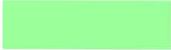
The director determined that the documents submitted in response to the notice established the applicant's residence and physical presence from 2002 to date of filing. However, the applicant did not submit any documentation to establish his residence and physical presence for 2001 and 2009. The director concluded that the applicant had failed to submit sufficient evidence to establish continuous residence since February 13, 2001 and continuous physical presence since March 9, 2001 and denied the application on these grounds.

Counsel's statement on appeal has been noted. However, the holding reached in *Vera-Villegas v. INS* is not pertinent to the application before USCIS in this proceeding. The regulatory requirements for an application for suspension of deportation are different from the regulatory requirements to establish continuous residence and continuous physical presence in the United States as set forth at 8 C.F.R. § 244.9(a)(2). The only types of affidavits listed as acceptable evidence of an alien's continuous residence and continuous physical presence in the United States at 8 C.F.R. § 244.9(a)(2) are: affidavits supplied by employers; affidavits supplied by organizations with which a self-employed alien has done business; and, affidavits supplied by officials of organizations of which the applicant has been a member. The regulation at 8 C.F.R. § 244.9(a)(2) does not list affidavits of witness from friends, acquaintances, or family members as acceptable evidence of continuous residence and continuous physical presence during the requisite time frames. While such affidavits may be given some consideration under the provision of 8 C.F.R. § 244.9(a)(2)(vi)(L) as "any other relevant document," the evidentiary standard set forth at 8 C.F.R. § 244.9(a)(2) clearly gives greater evidentiary weight to contemporaneous documents as proof of an alien's continuous residence and physical presence in the United States during the requisite time frames.

The applicant states that he filed tax returns for 2001, but has not provided evidence from the Internal Revenue Service to support his statement. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The AAO does not view the evidence submitted throughout this and prior TPS application proceedings as substantive to support a finding that the applicant has continuously resided and has been continuously physically present in the United States since February 13, 2001 and March 9, 2001, respectively. 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.

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NON-PRECEDENT DECISION

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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.