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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: JUL 25 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 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 she had continuously resided in the United States since February 13, 2001 and she had been continuously physically present in the United States since March 9, 2001.

On appeal, counsel asserts that there is no requirement for physical presence or continuing presence at 8 C.F.R. § 244.2(f)(iv). Counsel states, in pertinent part:

Reading this code section as requiring physical presence and continuing presence of the child in the United States at the time of the initial registration, would nullify and renders moot part of section (f) cited above, specifically section (iv). If the child has to be present at the time of the initial registration, then the child can simply apply for TPS. The need of proving that he is the child or spouse of a person that registered during the initial registration does not make any sense.

On the other hand, the reading allowing a minor child or spouse to register at a later time would allow for family reunification, the stated policy of the USCIS.

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 TPS during the initial registration period announced by public notice in the FEDERAL REGISTER,
 - (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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until September 9, 2013, upon the applicant's re-registration during the requisite period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period she 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 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 record reflects that the applicant filed her initial TPS application on November 7, 2011. The applicant presented evidence to establish eligibility for late registration as a child of an alien currently eligible to be a TPS registrant.

While regulations may allow children of TPS beneficiaries to file their applications after the initial registration period had closed; these regulations do not relax the requirements for eligibility for TPS. An applicant must meet the continuous residence and continuous physical presence requirements for the designated state.

In *Matter of Echevarria*, 25 I&N Dec. 512 (BIA 2011), the Board of Immigration Appeals noted that subsections (f)(1) and (2) are divided by the disjunctive conjunction “or” and that the provisions of subsection (f)(2) are not included in the eligibility requirements for initial TPS registrants in subsection (f)(1). The court found that subsection (f)(2), which is comprised of subparagraphs (i) through (iv), sets forth four separate and distinct conditions precedent for late initial registration for TPS. Applicants qualifying for late initial registration under one of the four conditions precedent set forth in subsection (f)(2) must still establish eligibility for TPS in accordance with subsections (a) through (e). *Id.* at 518-19.

As stipulated in section 244(c) of the Act, the Secretary designated the dates required to establish continuous residence as of February 13, 2001, and continuous physical presence since March 9, 2001. The applicant, in this case did not enter the United States until July 30, 2008. Therefore, she was not present in the United States during the requisite periods required to establish continuous residence and continuous physical presence. The applicant has, thereby, failed to establish that she 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 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.