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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



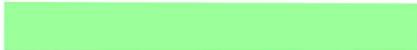
U.S. Citizenship
and Immigration
Services



DATE: JUN 28 2013

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.

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,

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 (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: 1) establish he was eligible for late registration; 2) establish his continuous residence since February 13, 2001; 3) establish his continuous physical presence since March 9, 2001; 4) establish his identity; and 5) submit requested court documentation relating to his criminal record.

On appeal, the applicant expresses remorse for his past behavior and requests that his application be reconsidered.

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 parole; 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.

An alien shall not be eligible for TPS under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under the term "felony" of this section. For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 244.1.

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of

punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

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 has established his identity.

In response to a notice dated May 11, 2012, the applicant submitted a copy of the biographical page of his El Salvadoran passport issued on December 26, 2008. The applicant has established his nationality and identity and, therefore, the director's finding on this issue will be withdrawn.

The second 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 October 8, 2007. The director denied the application on June 12 2008 because the applicant failed to establish he was eligible for late registration, he failed to establish continuous residence and he fail to establish continuous physical presence in the United States during the requisite periods. No appeal was filed from the denial of that application.

The applicant filed the current TPS application on March 7, 2012 under the late initial filing provision. On October 3, 2012, the director denied the application because the applicant had not provided any new and compelling evidence that overcame the reason(s) for denying his initial TPS application.

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. The provisions for late registration detailed in 8 C.F.R. § 244.2(f)(2) 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 third and fourth 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 documents submitted are not sufficient to establish continuous residence and continuous physical presence in the United States during the requisite periods. Specifically, the applicant provides an uncertified transcript from [REDACTED] indicating that the applicant entered the tenth grade on January 18, 2002 and left October 31, 2002. If the applicant has been residing in the United States since December 2000, it is unclear why he did not provide school transcripts reflecting his attendance prior to January 2002. The certificate dated in 2001 has no probative value as the required English translation was not provided. The statement from [REDACTED] pastor of the [REDACTED] has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 244.9(a)(2)(v). Most importantly, the pastor does not explain the origin of the information to which he attests. [REDACTED] in her affidavit, indicated that the applicant and his family rented a room in her house from December 2000 to June 2001; however, no evidence was submitted to corroborate the affiant's affidavit.

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).

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. 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.

The fifth issue in this proceeding is the applicant's criminal record.

The record reflects that on February 13, 2008, the applicant was arrested and charged with forgery with written instrument in [REDACTED] Arizona, and on September 18, 2010 for driving on a suspended/revoked license in [REDACTED] Illinois. On appeal, the applicant submits:

- Court documentation in Case no. [REDACTED] which indicates that on December 20, 2010, the applicant pled guilty to driving on a suspended license, a misdemeanor. The applicant was ordered to pay a fine.
- Court documentation in Case no. [REDACTED] SE from the [REDACTED] County Superior Court of Arizona, which indicates that on March 14, 2008, the applicant pled guilty to criminal possession of a forgery device, a class six

undesigned felony offense. The applicant was placed on probation for one year and was ordered to pay a fine, restitution and court cost. On December 16, 2008, the court ordered that the undesigned offense be designed a misdemeanor and that the applicant be discharged from probation effective December 31, 2008.

A class six felony is considered an "open" offense because the trial court is conferred discretion, by the terms of Arizona Revised Statutes section 702(G), in determining the appropriate point at which to classify the offense as a class six felony or a class one misdemeanor. *State v. Shlionsky*, 184 Ariz. 631, 632, 911 P. 2d 637, 638 (App. 1996). Here, the record shows that the trial court placed the applicant on probation for a class six felony and designated his offense as a misdemeanor upon its approval of the applicant's request for early termination of probation. Arizona Revised Statutes section 13-707 states that the maximum term of imprisonment for a class one misdemeanor is six months.

In *Matter of Cota-Vargas*, 23 I & N Dec. 849 (BIA 2005), it was held that a trial court's decision to modify or reduce an alien's criminal sentence is entitled to full faith and credit, and such a modified or reduced sentence is recognized as valid for purposes of the immigration law without regard to the trial court's reasons for effecting the modification or reduction.

In the instant case, the court did not erase the applicant's record of guilt, instead, it modified the original charge so that the applicant stood convicted of a misdemeanor, not a felony. In view of the holding in *Cota-Vargas*, the AAO will give full faith and credit to the trial court's designation of the applicant's offense as a misdemeanor rather than a class six undesigned felony.

The applicant is ineligible for TPS due to his two misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Therefore, the application must be denied on this basis as well.

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.