



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE:

MAR 04 2013

Office: VERMONT SERVICE CENTER

FILE:

[Redacted]

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

On appeal, counsel puts forth a brief disputing the director's findings. Counsel provides copies of birth certificates of the applicant's children, and an affidavit from the applicant describing the circumstances that led to the meeting of a notario, who he claims filled out applications for TPS and employment authorization.

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

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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.

The record reflects a removal hearing was held on December 5, 1995, and the alien was granted voluntary departure from the United States on or before March 5, 1996. A Form I-205, Warrant of Deportation, was issued on May 20, 1996.

The applicant filed his initial TPS application [REDACTED] on March 9, 2005, and indicated that he was re-registering for TPS. Said application, however, was incorrectly approved on September 8, 2005, as there is no evidence that the applicant had filed an initial TPS application. The applicant filed three subsequent TPS re-registration applications and each application was denied. The applicant filed the current TPS application on December 27, 2011.

On appeal, counsel asserts that on or about March 12, 2001, the applicant paid a notario to fill out and file his applications for TPS and employment authorization. Counsel states that the applicant signed both applications and was informed by the notario that he would file everything.

Although counsel notes that the applicant was not assisted by an attorney but by a notario, there is no remedy available for an individual who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on his behalf. *See* 8 C.F.R. § 292.1. The AAO only considers complaints based upon ineffective assistance against accredited representatives. *Cf. Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel).

Contrary to counsel's assertion, the Form I-765, Application for Employment Authorization, filed on March 12, 2001, was under the category C08, designated for an individual who has filed a Form I-589, Application for Asylum and Withholding of Removal. The applicant was informed of his ineligibility under category C08 in a notice issued on April 5, 2001, by the Director, Nebraska Service Center. There is no evidence that the notice, which was sent to the applicant's address of record at the time, was returned as undeliverable. As the registration period for TPS was still in effect, the applicant had the opportunity to file the required Form I-821, Application for Temporary Protected Status, along with the Form I-765 under the correct category (C19). It must be noted that, in his statement dated December 26, 2008, the applicant acknowledged that he did not submit an initial Form I-821.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on July 10, 2012.

On appeal, 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). There is no exceptional circumstance exception for late filing under the Act or the regulations. 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.

The director, in his decision of July 10, 2012, indicated that the applicant has failed to establish evidence of continuous residence and continuous physical presence in the United States from January 2004 through February 2006 and from August 2006 through October 2009.

On appeal, counsel asserts that the director erred in his finding as the applicant re-registered for TPS and his employment authorization in March 2005, August 2007 and January 2009 with his address still being in Colorado.

Filing applications for re-registration during a specific time-frame does not establish that the applicant was continuously residing and was continuously physically present in the United States. As the applicant claims to have lived in the United States since 1992, it is reasonable to expect that the applicant would have contemporaneous evidence to support his claim of residence and physical presence during the periods in question. However, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the residence and physical presence requirements 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 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.