

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

(b)(6)

DATE:

MAY 15 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:

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,

for 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 there is an erroneous conclusion of law regarding the applicant's eligibility for TPS. Counsel states, "the decision is incorrect in regards that it states that the evidence submitted does not establish that [the applicant] is eligible to take advantage of the late registration provisions of the TPS regulation." Counsel resubmits the documents in an attempt to establish the applicant's continuous residence and continuous physical presence in the United States during the requisite periods.

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 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 that the applicant filed his initial TPS application () on November 5, 2001. On August 20, 2002, the Director, Nebraska Service Center, denied the application as the applicant failed to submit sufficient evidence to establish his continuous residence since February 13, 2001, and his continuous physical presence since March 9, 2001 in the United States. No appeal was filed from the denial of that application.

The applicant filed the current application on December 19, 2011 and it was accepted under the late initial filing provisions. The applicant indicated on the application that his date of entry into the United States was September 10, 2001. On April 3, 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 documentation 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 June 28, 2012.

Having an application for TPS pending during the initial registration period does not render an alien eligible for late registration under 8 C.F.R. § 244.2(f)(2). 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's circumstances outlined by counsel on appeal do not meet any of the criteria 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.

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 denying the current application, concluded that the evidence submitted only served to establish the applicant's residence and physical presence in the United States since November 5 2001. The director determined that as no dates of employment had been provided, the applicant's adjusted gross income (\$4005) on his tax return and the wages reported on his wage and tax statement (\$3927) for 2001 were not enough to establish employment for the entire year. The director also determined that the applicant's September 10, 2001 date of entry precluded him from establishing residence and presence in the United States during the requisite periods.

In response to the notice of April, 3, 2012, which also requested the applicant to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States, the applicant submitted an affidavit from () dated May 4, 2012, who attested to the applicant's residence in the United States since September 2001. The affiant indicated that the

applicant shared a residence with her from September 2001 through November 2002 at [REDACTED] Kent, Washington.

The affidavit from [REDACTED] raises questions to its authenticity as the address listed on the applicant's TPS application in November 2001 and the address listed on his 2001 wage and tax statement do not correspond with the affiant's place of residence in 2001.

The applicant's wages for 2001 do not establish that they were earned as of February 13, 2001 to establish continuous residence or as of March 9, 2001 to establish continuous physical presence. The applicant had the opportunity on appeal to submit evidence establishing his dates of employment in 2001; however, he failed to do so. Further, the applicant has not provided any credible evidence to establish residence and physical presence prior to October 2001. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The record reflects that during the initial application proceedings, the applicant provided copies of five pay stubs from employer, [REDACTED], for the pay periods starting October 17, 2001 and ending January 8, 2002.

These pay stubs along with documents submitted throughout the current and initial application proceedings credibly establish the applicant's presence and residence in the United States since October 17, 2001. Based on the applicant's claim on his current TPS application to have entered the United States on September 10, 2001 along with the fact that he has not submitted any credible evidence to dispute this issue, tend to support that the applicant was not in the United States during the periods in question. Accordingly, the applicant cannot meet the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. 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.