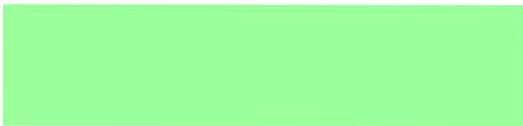


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



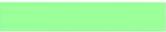
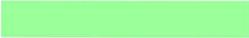
U.S. Citizenship
and Immigration
Services

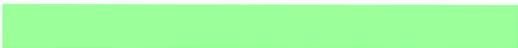
(b)(6)



DATE: **MAY 20 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,




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, the applicant states that he is eligible for late registration as his asylum case was pending until 2006. The applicant asserts, in pertinent part:

Now then, the 60 days period that you give or want applicants to apply for the next benefit it is very complicated because circumstances may arise and it is so the case in my person and I am sure that in most people such as age barrier in which one does not have the power to apply because of under age, also the knowledge factor in which one does not know about those 60 days after one's benefit has been terminated and or decided.

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. 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. *See* 8 C.F.R. § 244.2(g).

The record reflects that on February 6, 1996, the applicant filed a Form I-589, Application for Asylum and Withholding of Removal. On August 3, 2006, the Form I-589 was denied as the applicant failed, without good cause, to appear for his scheduled interview. While the applicant's asylum application technically rendered him eligible for late registration, the regulation at 8 C.F.R. § 244.2(g), requires that a late registration application for TPS be filed within 60 days immediately following the expiration or termination of conditions described in 8 C.F.R. § 244.2(f)(2). The applicant filed his TPS application on March 13, 2012, more than five years after the end of his 60-day period for late registration eligibility.

The applicant appears to imply that due to an age barrier he did not apply for TPS within the 60-day period following the denial of his Form I-589. The applicant's assertion is without merit as he was 31 years old in 2006.

The applicant's statements made on appeal have been considered. The AAO, however, is bound by the clear language of the regulations and lacks the authority to change them. Further, there is no provision to waive the registration requirement based on an assertion that the applicant lacked knowledge of the immigration laws. The applicant did not file his TPS application during the initial registration period or during the allotted 60-day late registration period described in 8 C.F.R. § 244.2(g). Consequently, the director's decision to deny the TPS application on this ground 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 application, determined that the applicant had established residence and physical presence in the United States prior to January 2001 and from November 2003 to the time of filing. The director also determined that the applicant's employment authorization card issued on December 13, 2001 was not sufficient to establish continuous residence and continuous physical presence in the United States.¹

¹ USCIS records reflect that the applicant filed the Form I-765, Application for Employment Authorization, (under category C08) on September 25, 2001.

The applicant, on appeal, asserts that he has submitted sufficient evidence to establish that he has “been here before, during and after that date to the present time.” The applicant submits copies of documents previously submitted in an attempt to establish his residence and physical presence in the United States during the requisite periods.

Contrary to the applicant’s assertion, he has not submitted sufficient evidence to establish continuous residence and continuous physical presence in the United States. There is a significant period of time, namely, February 2001 through October 2003 that has not been accounted for. The AAO does not view the remaining documentation as substantive to support a finding that the applicant continuously resided in the United States since February 13, 2001 and was continuously physically present 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 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.