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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: NOV 08 2013

Office: VERMONT SERVICE CENTER

FILE: [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 (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  
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 had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

On appeal, counsel asserts that in *Matter of N-C-M*, 25 I&N Dec. 535 (BIA 2011),<sup>1</sup> the Board of Immigration Appeals says “NOTHING” about *Matter of Echeverria*, and its requirements of physical and continuous residence. Counsel states that the applicant was justified in relying solely upon *Matter of N-C-M* in filing his application under the late initial provisions.

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.

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.

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<sup>1</sup> It was held that in order to qualify for late initial registration for TPS, an applicant filing as the “child of an alien currently eligible to be a TPS registrant” must establish that he or she was a “child” only “at the time of the initial registration period,” not at the time when the application for late initial registration is filed.

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 March 9, 2015, 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 applicant filed his initial TPS application March 9, 2012. The applicant indicated on said application to have entered the United States on November 10, 2005. In denying the application on January 14, 2013, the director determined that while the applicant had met the criteria for late registration as a child of an alien currently eligible to be a TPS registrant, he was ineligible for the benefit sought as he did not meet the regulatory requirement of continuous residence since February 13, 2001 and continuous physical presence since March 9, 2001.

In *Matter of Echeverria*, 25 I&N Dec. 512 (BIA 2011), it was held that a late initial registrant for TPS under 8 C.F.R. § 244.2(f)(2) must independently meet all initial registration requirements of TPS.

Counsel argues that the director, in denying the application, improperly applied *Echeverria*.

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. According to 8 C.F.R. § 244.2, an alien may be granted TPS if the alien establishes that he or she meets the requirements listed in subparagraphs (a), (b), (c), (d), (e) and subparagraph (f)(1), or (f)(2).

Further, a careful reading of the statute provided in section 244(c) of the Act states that a national of a designated foreign state is eligible for TPS if, (i) the alien has been continuously physically present in the United States since the effective date of the most recent designation of that state; (ii) the alien has continuously resided in the United States since such date as the Secretary may designate. As stipulated in section 244(c), the Secretary designated the dates required to establish continuous residence as February 13, 2001, and continuous physical presence as March 9, 2001. The applicant, in this case, was not present in the United States during the requisite periods required to establish continuous residence and continuous physical presence. The AAO is bound by the

clear language of the statute and lacks the authority to change the statute. The statute did not provide for a waiver of the continuous residence and continuous physical presence requirements.

The applicant arrived in the United States subsequent to the eligibility period. Therefore, he cannot meet the criteria for continuous residence and continuous physical presence in the United States during the requisite periods described in 8 C.F.R. § 244.2(b) and (c). The AAO is not required to approve an application where eligibility has not been demonstrated. *See e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Consequently, the director's decision to deny the application for TPS on these grounds will 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.