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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: SEP 0 3 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 (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,

for

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 she was eligible for late registration. The director also denied the application because the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, counsel asserts that the applicant was granted TPS during the initial registration and was given an EAD from November 28, 2001 until September 9, 2002. Counsel states because the applicant was an initial registrant she must only meet the other requirements for a grant of TPS under 8 C.F.R. §244.2. Counsel states that the applicant "is not subject to the constraints the Vermont Service Center claims" and is only required to show eligibility under 8 C.F.R. § 244.2(f)(2) if she was not an initial registrant.

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 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 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 she 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 her initial Form I-821, Application for Temporary Protected Status, ( ) and Form I-765, Application for Employment Authorization, on October 4, 2001. The applicant was granted employment authorization (category C19) from November 28, 2001 through September 9, 2002. On October 17, 2002, the director denied that TPS application due to abandonment. No motion was filed from the denial of that application.[1]

Subsequently, the applicant filed three TPS applications and indicated on each application that she was re-registering for TPS. USCIS records indicate that the re-registration applications were denied, rejected or administratively closed because the applicant's initial TPS application had been denied and she was not eligible to apply for re-registration for TPS. *See* 8 C.F.R. § 244.17.

The applicant filed this TPS application on November 22, 2010, and it was considered under the late registration provisions described in 8 C.F.R. § 244.2(f)(2).[2]

The fact that the applicant was granted employment authorization in 2001 is not evidence that she was approved TPS. Based upon filing of the Form I-821, an applicant is afforded temporary treatment benefits and is issued employment authorization upon establishing *prima facie* eligibility[3] for TPS pursuant to 8 C.F.R. § 244.5(b). As provided in 8 C.F.R. § 244.13(a), temporary treatment benefits terminate upon a final determination with respect to the alien's eligibility for TPS.[4] USCIS records reflect that all Form I-765s filed subsequent to the denial of the applicant's initial application on October 17, 2002, have been denied

On appeal, the applicant does not provide any evidence to establish her eligibility as a late registrant. The provisions for late registration were not created to allow aliens who had abandoned their initial application to circumvent the normal application and adjudication process. Rather, these

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[1] A denial due to abandonment may not be appealed, but an applicant may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

[2] Any TPS application subsequently submitted by the same applicant after an initial application is filed and a decision has been rendered, and the initial registration period has expired, must be considered as either a request for re-registration or as a new filing for TPS benefits.

[3] Pursuant to 8 C.F.R. § 244.1, *prima facie* means eligibility established with the filing of a completed application for TPS containing factual information that if unrebutted will establish a claim of eligibility under section 244 of the Act.

[4] If TPS is denied, employment authorization shall terminate upon notice of denial or at the expiration of the employment authorization document, whichever occurs later. 8 C.F.R. § 244.12(c).

provisions 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 she has met one of those provisions outlined in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application on this ground will be affirmed.

The second and third issues to be addressed are whether the applicant has established her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001.

On July 27, 2011, the applicant was requested to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant, in response, provided photocopies of:

- Wage and tax statements (Form W-2) for 2001, 2003, 2004, 2007.
- Payment Voucher (Form 1040-V), for 2002.
- Income Tax Return (Form 1040EZ) for 2005 and a letter dated May 22, 2006, from the Internal Revenue Service (IRS) regarding a balance due for the 2005 tax year.
- Income Tax Returns, and wage and tax statements for 2008, 2009 and 2010.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application.

The Form 1040-V for 2002 and the letter dated May 22, 2006 from the IRS alone are not sufficient to establish residence and physical presence in the United States during those years. As the applicant claims to have lived in the United States since 2000, it is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these documents; 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 she satisfies the continuous residence and continuous 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.