



U.S. Citizenship
and Immigration
Services

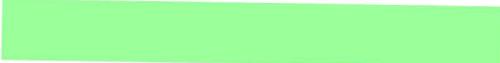
(b)(6)



DATE: **APR 23 2014**

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,

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 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 the applicant “submitted copies of original documents which were previously submitted to USCIS and in turn, sent back to respondent through his FOIA request.” Counsel asserts that the documents included evidence of continuous presence spanning over 20 years. Counsel submits additional documentation to supplement the appeal.

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 *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.

The first issue to address 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 [REDACTED] on October 9, 2001. On May 3, 2003, the director denied the application. No appeal was filed from the denial of that application.¹ The applicant filed a re-registration application [REDACTED] on September 4, 2006. On February 24, 2007, the application was administratively closed as the initial TPS application had been denied and the applicant was not eligible to re-register for TPS.

The applicant filed the current TPS application on January 28, 2013, and indicated that it was his first application to register for TPS.

On April 17, 2013, 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 photocopies of documents previously submitted with his earlier TPS applications. The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on July 29, 2013.

On appeal, counsel states, “while Respondent recognizes that a previous, unapproved application for TPS does not equate to relief, Respondent’s previous application for TPS was eventually approved.” Counsel states that a previously approved TPS application should qualify as previous relief from removal. Counsel asserts that the applicant was not aware he had to re-register and that this minor mistake should not bar the applicant from receiving TPS.

Contrary to counsel’s assertion, the applicant was never granted TPS. The fact that the applicant was granted employment authorization is not evidence that he was approved TPS. Based upon filing of the Form I-821 application for TPS, an applicant is afforded temporary treatment benefits and is issued employment authorization upon establishing *prima facie* eligibility² 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.

Counsel seemingly implies that submitting a TPS application during the initial registration renders the applicant eligible for late initial registration under 8 C.F.R. § 244.2(f)(2). The provisions for late registration were not created to allow aliens who had abandoned their initial applications to circumvent the normal application and adjudication process. Rather, these provisions were created in order to ensure that TPS benefits were made available to aliens who

¹ The decision indicates that the initial application was treated as a re-registration application. This was an inadvertent error, however, and did not prejudice the applicant.

² 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.

did not register during the initial registration period for the various circumstances specifically identified in the regulations. The applicant has not submitted evidence that he has met one of those provisions outlined in 8 C.F.R. § 244.2(f)(2). Further, the applicant cannot meet the good cause exception as he was never granted TPS. 8 C.F.R. § 244.17(c). 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 his continuous residence in the United States since February 13, 2001 and his continuous physical presence in the United States since March 9, 2001.

Along with his TPS application, the applicant provided copies of documents that were previously submitted with his initial TPS application. Specifically:

- An identification card and a driver's license from the Commonwealth of Virginia issued on May 8, 1998 and July 28, 2001, respectively.
- Earnings statements from [REDACTED] Inc. for the periods ending November 15, 2000 through September 25, 2001.

The applicant also included court documentation in Case no. [REDACTED] from [REDACTED] General District Court for the Commonwealth of Virginia, which indicates that on January 13, 2002, he was arrested for driving with .08 percent or more alcohol in the blood. On May 21, 2002, the applicant pled guilty to this misdemeanor offense and was sentenced to serve 180 days in jail (suspended), ordered to pay a fine and was placed on probation for one year.

The applicant was also requested on April 17, 2013 to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. Along with photocopies of documents that were previously submitted, the applicant, in response, submitted:

- A money gram dated June 29, 2007 listing the applicant as the purchaser.
- A check cashing identification card issued on March 11, 2005.
- Earnings statements from [REDACTED] Inc. for the periods ending April 22, 2007, February 27, 2011 and May 12, 2013.
- A letter dated July 1, 2013, from [REDACTED] indicating that the applicant has maintained an account since March 8, 2006.
- A Form W-2, wage and tax statement, a Form 1099, Miscellaneous Income, and federal and state individual income tax returns for 2005.

The director determined that the documents submitted were not sufficient to establish continuous residence and continuous physical presence during the requisite periods and denied the application. Counsel, on appeal, re-submits the documents previously mentioned above along with:

- A notarized affidavit from [REDACTED] of [REDACTED] Virginia, who indicates that he has known the applicant since 2001

and that the applicant rented a room in his house from March 2003 until March 2006.

- A letter dated August 14, 2014, from Father [REDACTED] pastor of [REDACTED] Virginia, who indicated that the applicant and his family have been attending mass since 2000 and that they are registered members.

The earnings statements from [REDACTED] credibly establish that the applicant was in the United States from November 15, 2000 through September 15, 2001. The AAO, however, does not view the remaining documents as substantive to support a finding that the applicant has continuously resided in and has been continuously physically present in the United States during the requisite periods.

The affidavit from Mr. [REDACTED] has little evidentiary weight or probative value, as it is not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support the affiant's assertions; however, no such evidence has been provided.

The letter from Pastor [REDACTED] has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the pastor does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of his involvement with the church.

While the earnings statements from [REDACTED] Inc. may be viewed as evidence that the applicant was in the United States at that time, no further documentation of the types enumerated in the regulation at 8 C.F.R. § 244.9(a)(2) has been submitted to demonstrate that the applicant has maintained continuous physical presence and continuous residence in the United States since then. If the applicant has been in the United States continuously from 1993 up to the present, as he claims, it is reasonable to expect that the applicant would have some more contemporaneous evidence to support his residence and presence throughout the periods in question.

The absence of sufficiently detailed documentation to corroborate the applicant's claim of continuous residence and continuous physical presence during the period in question seriously detracts from the credibility of his claim. He 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.