



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE:

APR 24 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

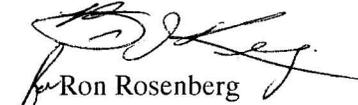
ON BEHALF OF APPLICANT:

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 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 during the initial registration period, the applicant did file and attempt to obtain TPS status and “[e]ven if the initial TPS application was denied for failure to respond to an RFE, respondent’s attempt during that time period should be considered an attempt at initial registration.” Counsel indicates at Part 2 on the appeal form that a brief and/or additional evidence would be submitted to the AAO within 30 days.¹ However, more than ten months later, no additional correspondence has been presented by counsel or the applicant.

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:

¹ Every appeal submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. 8 C.F.R. § 103.2(a)(1). The Form I-290B instructs the applicant to submit a brief and additional evidence to the AAO within 30 days of filing the appeal.

- (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); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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 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 TPS application [REDACTED] on May 7, 2001. On May 11, 2003, the Director, Texas Service Center, denied the application due to abandonment. No motion was filed from the denial of that application.²

The applicant filed another TPS application [REDACTED] on September 22, 2003. On March 4, 2004, the Director, Texas Service Center, denied the application as the applicant had failed to establish eligibility for late registration. The AAO, in dismissing the appeal on April 10, 2006, concurred with the director's findings.

Subsequently, the applicant submitted several TPS applications, which USCIS records indicate have been rejected or administratively closed.

The applicant filed the current TPS application on August 16, 2012 and indicated that she was filing an application for re-registration. The re-registration period is limited to individuals: 1) whose applications have been granted; 2) whose applications remain pending; or 3) who did not file during the initial registration period and meet any of the criteria under the late initial registration provisions described in 8 C.F.R. § 244.2(f)(2). Because the applicant was not eligible to apply for re-registration for TPS, the director considered the current application under the late registration provisions described in 8 C.F.R. § 244.2(f)(2).³

On February 14, 2013, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant, in response, provided copies of documents relating to the filing of her initial TPS application.

The director determined that the evidence submitted did not establish that the applicant was eligible for late registration and denied the application on May 15, 2013.

² 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).

³ 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.

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 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 did not register during the initial registration period for the various circumstances specifically identified in the regulations. The applicant, on appeal, 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 for TPS 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.

The director, in his decision, noted that the applicant had submitted sufficient evidence to establish residence and physical presence in the United States from May 2001 to the date of filing. The applicant was advised that the documents submitted prior to May 2001 lacked probative value as they were addressed to [REDACTED] and no documentation had been submitted to establish that the applicant and [REDACTED] are one and the same person.

The director determined that the applicant had failed to submit sufficient evidence to establish continuous residence and continuous physical presence in the United States and denied the application.

On appeal, the applicant neither addresses nor provides any evidence to overcome these findings. Therefore, the record must be considered complete.

The applicant has not submitted sufficient credible evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001. The applicant has, therefore, failed to establish that she 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.