



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE:

JAN 02 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 his: 1) nationality; 2) identity; 3) eligibility for late registration; 4) continuous residence in the United States since February 13, 2001; and 5) continuous physical presence in the United States since March 9, 2001.

On appeal, counsel submits a brief and additional evidence in an attempt to overcome the director's findings.

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 AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.

The first and second issues to be addressed are whether the applicant has established his nationality and identity as required in 8 C.F.R. § 244(a)(1).

On appeal, counsel provided a copy of a passport issued on [REDACTED] 2009 at the El Salvadoran Consulate in [REDACTED] which attests to the applicant's, [REDACTED]

nationality as El Salvadoran. Accordingly, the applicant has established that he is a national of a foreign state that is currently eligible for TPS. Therefore, the director's finding on these grounds will be withdrawn.

The third issue to be addressed 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.

As the applicant has submitted sufficient credible evidence in establishing his identity as [REDACTED] the marriage certificate in the record will be considered as acceptable evidence of his marriage on [REDACTED] 2001 to his spouse, who is currently eligible to be a TPS registrant. Therefore, the director's finding on this ground will be withdrawn.

The fourth and fifth 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.

In cases where an applicant claims to have met any of the eligibility criteria under an assumed name, the applicant has the burden of proving that the applicant was in fact the person who used that name.

The applicant has submitted various documents under the names [REDACTED] and [REDACTED] in an attempt to establish continuous residence and continuous physical presence during the requisite periods.

As the applicant has submitted sufficient credible evidence in establishing his identity as [REDACTED] the AAO will review the evidence in that name that has been submitted in an attempt to establish continuous residence and continuous physically presence. Specifically:

- A letter dated November 28, 2011, from [REDACTED] company secretary of [REDACTED] who indicated that “[a]fter a successful interview via telephone, Mr. [REDACTED] will be employed with [REDACTED] upon arrival to [REDACTED]
- Copies of children's birth certificates born in [REDACTED] on [REDACTED] 2005 and [REDACTED] 2008.
- A driver's license issued in the state of [REDACTED] on [REDACTED] 2002.
- Utility billing statements from [REDACTED] for service at [REDACTED] for the periods from May 16, 2002 through December 20, 2005.

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- Utility billing statements from [REDACTED] in [REDACTED] for service at [REDACTED] for the periods from November 2001 through October 31, 2003 and December 4, 2004 through August 7, 2006.

Based upon the above documents, the applicant has established residence and physical presence in the United States from November 2001 through August 7, 2006.

On September 16, 2013, a notice was issued to the applicant advising him that it was AAO's intent to dismiss the appeal as the evidence submitted on appeal did not overcome the director's findings. The applicant was informed that the documents addressed to [REDACTED] had no probative value or evidentiary weight as he had failed to provide credible evidence from the affiants and/or entities establishing that he and [REDACTED] are one and the same person. The applicant was also informed that the employment letters from [REDACTED] and [REDACTED] failed to include the employee's address at the time of employment as required under 8 C.F.R. § 244.9(a)(2)(i).

The applicant was granted 30 days in which to submit documentation to prove common identity, *i.e.*, that the assumed name was in fact used by the applicant. The applicant was advised that the most persuasive evidence of common identity is a document issued in the assumed name which identifies the applicant by photograph, fingerprint or detailed physical description. Letters accompanied by a photograph which has been identified by the affiant as the individual known to the affiant under the assumed name in question will carry greater weight.

The applicant, in response, submitted:

- A letter dated October 4, 2013, from [REDACTED] of [REDACTED] who attested to the employment and place of residence of [REDACTED] from January 2005 to April 2011 and at [REDACTED]
- A letter dated September 30, 2013, from [REDACTED], director of operations of [REDACTED] who attested to the employment and place of residence of [REDACTED] from May 26, 2000 through June 5, 2003 at [REDACTED]
- Copies of employment authorization cards (C08) issued to [REDACTED]
- A copy of a Form I-512, Authorization for Parole of An Alien into the United States, dated September 30, 1998 issued to [REDACTED]
- Affidavits from 31 affiants attesting to having known the applicant. A photograph of the applicant is affixed to several of the affidavits. It is noted that two of the affidavits will not be considered as they were written in the [REDACTED] language without the required English translation.¹

¹ Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3).

The AAO does not view the above documents as substantive to support a finding that the applicant has continuously resided and has been continuous physically present in the United States during the requisite periods.

The applicant failed to provide requested documentary evidence from [REDACTED] and [REDACTED] and other employers establishing that [REDACTED] and [REDACTED] are one and the same person. Therefore, the letters from Mr. [REDACTED] and Ms. [REDACTED] cannot be accepted as credible evidence to establish the applicant's continuous residence and continuous physical presence. It is unclear why affidavits with the attached applicant's photograph were submitted from the remaining affiants, but not from [REDACTED] and [REDACTED]. This fact undermines the credibility of the applicant's claim to have been employed at these entities during the period in question.

The affidavits submitted do not contain sufficient objective evidence to which they could be compared to determine whether the attestations were credible, plausible, or internally consistent with the record. To be considered probative, an affiant's affidavit must do more than simply state that an affiant knows an applicant for a specific time period. The affidavit must contain sufficient detail, generated by the asserted contact with the applicant, to establish that a relationship does in fact exist, how the relationship was established and sustained, and that the affiant does, by virtue of that relationship, have knowledge of the facts asserted. None of the affiants attested to the applicant's continuous residence in the United States. Two of the affiants indicate that they were co-workers of the applicant, but did not provide the place of employment. Five of the affiants indicate that they know that [REDACTED] and [REDACTED] are one and the same person, but failed to indicate how they are aware of that information. The affidavits from the affiants do not provide sufficient detail to establish that they had an ongoing relationship with the applicant that would permit them to know of the applicant's whereabouts and activities throughout the requisite periods.

Since these affidavits are seriously lacking in relevant detail, they lack probative value and have no minimal weight as evidence of the applicant's eligibility for TPS.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and his continuous physical presence 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.

Finally, while not the basis for the dismissal of the appeal, it is noted for the record that the applicant's applications for asylum and withholding of removal had been denied and on June 3, 1999, the applicant was granted voluntary departure from the United States with an alternate order of removal to take effect in the event that the applicant failed to depart as required on or before July 6, 1999.

ORDER: The appeal is dismissed.