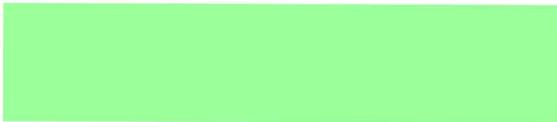




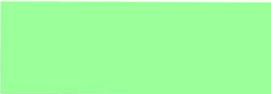
U.S. Citizenship
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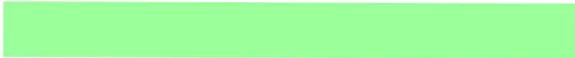


DATE: JAN 17 2014

Office: VERMONT SERVICE CENTER

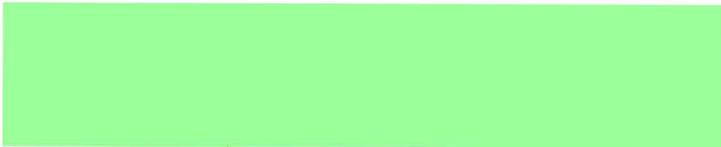


IN RE: Applicant:



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 has been present and residing in the United States since December 2000 and that the applicant has previously been granted employment authorization under TPS since 2001. Counsel submits additional evidence in an attempt to establish the applicant's continuous residence and continuous physical presence in the United States during the requisite periods. Counsel requests oral argument.

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 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.

The record reflects that on May 22, 2001, the applicant's father requested that his minor son be included in his asylum application. On September 9, 2008, the applicant's father was found eligible for NACARA suspension of deportation/special rule cancellation of removal, and he was granted adjustment of status to lawful permanent resident (LPR) under the classification of Z15.

The director, in his Notice of Intent to Deny dated July 27, 2012, determined that the applicant could not obtain the benefit sought through his father as he had not filed a TPS application within the 60-days immediately following the expiration or termination of condition of his father's asylum application.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on April 26, 2013.

Counsel, on appeal, provides a copy of the employment authorization card (A12) of the applicant's mother.

In *Matter of N-C-M-*, 25 I&N Dec. 535 (BIA 2011), 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. It was also held that the regulation at 8 C.F.R. § 244.2(g) does not apply to a child who seeks late initial registration for TPS benefits.

In the instant case, during the initial registration period, the applicant was a child (16 & 17 years old). USCIS records reflect that his mother is currently eligible to be a TPS registrant. In view of the decision of the Board of Immigration Appeals, the applicant has established late registration eligibility. Therefore, the finding of the director that the applicant had failed to establish eligibility for late registration will be withdrawn.

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 submitted the following evidence in an attempt to establish continuous residence and continuous physical presence:

- Copies of his children's birth certificates, who were born on June 5, 2008 and July 31, 2010 in Maryland.
- Copies of U.S. Individual Income Tax Return, Forms 1040EZ & 1040, and Wage and Tax Statement, Form W-2, for 2002, 2003, and 2007 through 2011.
- Copies of his employment authorization cards under category C08 from October 30, 2001 through October 9, 2004 and from April 17, 2008 through May 6, 2010.

The director determined that the evidence was insufficient to establish continuous residence and continuous physical presence in the United States during the requisite periods and denied the application on April 26, 2013.

Contrary to counsel's assertion, the applicant was granted employment authorization under the provisions for asylum and not for TPS.

On appeal, counsel resubmits the documents provided in an attempt to establish the applicant's continuous residence and continuous physical presence in the United States. Counsel also submits:

- A copy of a social security statement dated March 25, 2011, which reflects the applicant's earnings for 2002 to 2005 and from 2007 to 2009.
- An affidavit from the applicant indicating that he entered the United States on December 22, 2000 and he has been residing at [REDACTED] since December 2007.
- An affidavit from the applicant's mother, who attests to the applicant's entry into the United States on December 22, 2000 and that he immediately came to reside with her at [REDACTED]. The mother also attests to the applicant's residence in [REDACTED] since December 2007.

The applicant has provided sufficient and contemporaneous documents to establish his residence and physical presence in the United States from 2001 to 2005 and from 2007 to the date of filing. However, no evidence has been submitted to establish residence and physical presence in the United States in 2006. It is unclear if the applicant has been residing in the United States since 2000, why no contemporaneous documents for 2006 were provided.

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 be affirmed.

Finally, counsel has requested oral argument in this case. He indicated that the reason for requesting oral argument is for the applicant to have the opportunity to explain his case and all other supporting documentation submitted with his application. Counsel has clearly and precisely

constructed his arguments on appeal. No further explanation of the facts and issues need be made. Counsel's request for oral argument is, therefore, denied.

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.