



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **JUL 10 2014** Office: VERMONT SERVICE CENTER

FILE: [Redacted]

IN RE: Applicant: [Redacted]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254a

ON BEHALF OF APPLICANT:

[Redacted]

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. On September 25, 2013, the director denied the application because the applicant: 1) failed to establish she was eligible for late registration; 2) failed to establish she had continuously resided in the United States since February 13, 2001; 3) failed to establish that she had been continuously physically present in the United States since March 9, 2001; and 4) had been convicted of two misdemeanors in the United States.

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).

An alien shall not be eligible for TPS under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

“Misdemeanor” means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under the term “felony” of this section. For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 244.1.

The term ‘conviction’ means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

Section 101(a)(48)(B) of the Act provides, “any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.”

The AAO conducts appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012).

The first issue to be addressed is the applicant’s criminal history.

The Federal Bureau of Investigation report reflects that on March 15, 1999 and September 21, 2010, the applicant was arrested by the Nashville Police Department (Tennessee) for no driver’s license, a misdemeanor offense.

The record contains:

1. Court documentation in Case no. [REDACTED] from the Criminal Court of [REDACTED] County, Tennessee, which indicates that on September 21, 2010, the applicant pled guilty to violating T.C.A. 55-50-301, no driver’s license, a Class B misdemeanor. The applicant was ordered to pay court costs and sentenced to time served.
2. A citation (no. [REDACTED]) and court documentation in Case no. [REDACTED] from the Criminal Court of [REDACTED] County, Tennessee, which indicates that on June 29, 1999, the applicant plead guilty to violating T.C.A. 55-50-301, no driver’s license, a misdemeanor.¹ The applicant was sentenced to serve 30 days in jail and ordered to pay a fine.

On appeal, citing T.C.A. § 55-50-351, counsel asserts that the above offenses are not misdemeanors for immigration purposes as a violation of no driver’s license is a Class C misdemeanor. Counsel states that the offenses are administrative charges and are not moving violations.

The applicant may have been convicted of a Class C misdemeanor in Case no. [REDACTED]; however, the court documentation in Case no. Case no. [REDACTED] clearly indicates that the applicant pled guilty to violating a Class B misdemeanor. Counsel cannot collaterally attack the decision of the

¹ The court documentation does not indicate the grade of the offense that was violated.

court before the AAO. The AAO is not the proper forum for disputing the validity of a state conviction.

T.C.A. 40-35-111(e) provides the authorized terms of imprisonment and fines for:

(2) Class B misdemeanor, not greater than six (6) months or a fine not to exceed five hundred dollars (\$500), or both, unless otherwise provided by statute; and

(3) Class C misdemeanor, not greater than thirty (30) days or a fine not to exceed fifty dollars (\$50.00), or both, unless otherwise provided by statute.

Whether the offense of no driver's license is classified as an "administrative charge" or a "moving violation" is simply not relevant to the question of whether the offense qualifies as a "misdemeanor" for immigration purposes.

The regulation clearly states that a misdemeanor is a crime "*punishable* by imprisonment for . . . one year or less, *regardless of the term . . . actually served.*" [Emphasis added.] Likewise, the regulation clearly states that a criminal violation will not be considered a misdemeanor only if it is "*punishable* by imprisonment for a maximum term of five days or less." [Emphasis added.] The operative word is "punishable," which indicates that a misdemeanor is defined under the regulation by the maximum imprisonment possible for the crime under Tennessee law. The above offenses qualify as misdemeanors under the regulation as a Class B or C misdemeanor conviction punishable by more than five days imprisonment under Tennessee law.

The court dispositions reflect that the applicant pled *guilty* to the offenses and the judge ordered some form of penalty and/or punishment to each charge above. Therefore, the applicant has been convicted of the offenses within the meaning of section 101(a)(48)(A) of the Act.

The applicant is ineligible for TPS due to her two misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application on this ground will be affirmed.

The second 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. If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

The record reflects that on or about September 16, 1998, a Form I-589, Application for Asylum and Withholding of Removal, was filed by the applicant. On March 3, 1999, a Form I-862, Notice to Appear, was issued and served on the applicant on March 5, 1999. A removal hearing

was held on September 14, 1999 and the alien was ordered removed *in absentia*.² The applicant filed her initial TPS application on December 6, 2012.³

On June 4, 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). Counsel, in response, provided a copy of the applicant's July 27, 1998 marriage certificate, and indicated that the applicant had used her married name [REDACTED] when she applied for asylum in 1998.⁴ Counsel also submits immigration documents relating to the applicant's 1998 master hearing and 1999 notice to appear.

The director, in his decision to deny the application, noted that the applicant's asylum application was denied on March 2, 1999 and, therefore, the applicant did not qualify for late registration as the TPS was not filed within the 60-day period of the final decision of the asylum application.

On appeal, counsel asserts that during the initial registration period the applicant was under an order of removal and that order and her pending asylum application placed the applicant in a nonimmigrant status. Counsel states that "the sixty day deadline for filing for TPS does not apply as [the applicant] was still pending removal and the removal period has not ended."

Contrary to counsel's assertion, the applicant's asylum application was not pending and the applicant was not in removal proceedings during the initial registration period designated for El Salvador. As a motion to reopen had not been filed, the applicant's asylum application was no longer pending and the removal order was final as of September 14, 1999.⁵

The AAO does not concur with the director's finding regarding the 60-day period to file a TPS application following the final decision of the asylum application. As the new designation for El Salvador was not in effect until March 9, 2001,⁶ the applicant was not eligible to file a TPS application within the 60-day period following the expiration or termination of the qualifying condition. The applicant, however, had 18 months to file a TPS application during the initial registration period for the new designation for El Salvador from March 9, 2001 through September 9, 2002, but failed to do so.

² On March 21, 2013, a motion to reopen was filed, which was denied by the Immigration Court on June 11, 2013.

³ On October 13, 2011, the applicant through counsel appeared before the Immigration Court and indicated that she would be filing for TPS. There is no evidence in the record that a TPS application had been filed prior to December 6, 2012.

⁴ The country of birth of the applicant's spouse, [REDACTED] is listed as Mexico on their daughter's birth certificate.

⁵ An order of removal entered *in absentia* or in removal proceedings pursuant to section 240(b)(5) of the Act may be rescinded only upon a motion to reopen filed within 180 days after the date of the order of removal if the alien demonstrates that the failure to appear was because of exceptional circumstances as defined in section 240(e)(1) of the Act. 8 C.F.R. § 1003.23(b)(4)(ii).

⁶ The 1991 TPS designation for El Salvador terminated on June 30, 1992, and is unrelated to the present 2001 TPS re-designation.

The provisions for late registration detailed in 8 C.F.R. § 244.2(f)(2) 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's circumstances outlined by counsel on appeal do not meet any of the criteria described 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 third and fourth 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 appeal, counsel asserts that the applicant has previously submitted evidence to establish continuous residence and continuous physical presence in the United States during the initial registration period.

On June 4, 2013, the applicant was also 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 the following:

- A Tennessee driver's license that expired in May 2006.
- Bill of Sale for two vehicles entered into on April 2, 2006 and July 10, 2007, and a Certificate of Title issued by the State of Tennessee in June 2006.
- Documentation regarding a medical visit on May 29, 2008 from [REDACTED] Tennessee.
- An electric bill from [REDACTED] for the period ending June 3, 2013 and an utility bill from [REDACTED] dated April 16, 2013.
- A rent receipt from [REDACTED] Tennessee dated January 4, 2012.
- Earnings statements for the periods ending May 3 and 10, 2001, June 28, 2002, July 26, 2002, November 29, 2002, January 10 and 24, 2003, April 18, 2003, March 20, 2004, April 17, 2004, October 9, 2005, and January 12 2006.

The director determined that the evidence submitted was not sufficient to establish continuous residence and continuous physical presence in the United States and denied the application, in part, on these grounds.

Contrary to counsel's assertion, 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 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 her claim. 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.