U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUL 2 1 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. On September 20, 2013, 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 he had been continuously physically present in the United States since March 9, 2001.

On appeal, counsel asserts that the applicant is in removal proceedings and that he was ordered removed from the United States on August 4, 1998. Counsel submits additional evidence in an attempt to establish residence and physical presence in the United States during 2010 through 2012.

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 first and second issues to be addressed are whether the applicant has established continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On March 18, 2013, the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided the following:

- A document dated April 14, 2009, from the Social Security Administration reflecting the applicant's earnings from 1994 through 2008.
- A Florida driver's license issued on June 6, 1996.
- A marriage certificate indicating that the applicant was married on August 15, 2009 in Florida.
- Copies of the applicant's employment authorization cards (C08) valid from March 25, 1996 through July 3, 1999, and his Form I-589, Application for Asylum and Withholding of Removal.
- A copy of Form I-862, Notice to Appear, issued February 24, 1998 and served on the applicant on March 2, 1998.
- A copy of an Appointment Request dated May 28, 2013 before the Executive Office for Immigration Review.

The director, in his decision, concluded that the applicant had failed to submit evidence to establish residence and physical presence in the United States from 2010 through 2012. The director inadvertently noted that the evidence submitted did not establish that the applicant had been "continuously physically present in the United States from January 5, 1999, to the date of filing" his TPS application. This was a harmless error by the director, which did not affect the outcome of his decision, and has not prejudiced the applicant.

On appeal, counsel provides:

- Wage and Tax Statement, Form W-2, for 2010 ($23,845), 2011 ($24,409) and 2012 ($25,737).
- Miscellaneous Income, Form 1099-MISC, for 2011 ($1,470).
- An incomplete Form 1040A, U.S. Individual Income Tax Return, for 2010.
- Form 1040A, U.S. Individual Income Tax Return, for 2011 and 2012.
- Letters from the Internal Revenue Service dated March 15, 2011 and May 11, 2011 regarding the filing of the applicant's 2010 federal income tax return.
- Earnings statements for the periods ending December 24, 2010, January 7 and 14, 2011, March 18, 2011 and September 2, 9 and 16, 2011.

The applicant has submitted sufficient evidence on appeal to establish his physical presence and residence in the United States from 2010 through the date of filing. Accordingly, the applicant has established continuous residence since February 13, 2001 and continuous physical presence since March 9, 2001 in the United States. Therefore, the director's finding that continuous physical presence has not been established will be withdrawn.

The third 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 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 or about January 14, 1994, a Form I-589 was filed by the applicant. A Form I-862 was served on the applicant on March 2, 1998. In a removal hearing on August 4, 1998, the Immigration Judge ordered the applicant removed *in absentia* from the United States.[1] There is no evidence that a motion to reopen was filed before the Immigration Court. On September 16, 1998, a Form I-205, Warrant of Removal/Deportation, was issued. The applicant filed his initial TPS application on March 9, 2012.

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 August 4, 1998.[2] Accordingly, the applicant is not eligible for late registration under 8 C.F.R. § 244.2(f)(2)(ii). Nor is the applicant eligible for late TPS registration under the other three qualifying criteria at 8 C.F.R. § 244.2(f)(2)(i), (iii) or (iv). Consequently, the director's decision to deny the application on this ground will be affirmed.

Finally, while not the basis for the dismissal of the appeal, it is noted that the applicant's arrest on October 23, 2004, is still pending before the County (Florida) Court for driving under the influence of alcohol or drugs, two counts of driving under the influence causing damage to person or property, operating a motor vehicle without a valid driver's license and driving with expired license more than six months. This matter shall be addressed in any future proceedings.

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.

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[1] On May 5, 1998, the applicant was provided written notification of the time, date and location of the master hearing scheduled before the Immigration Court on August 4, 1998.

[2] 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) .