



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JUL 28 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 October 15, 2013, the director denied the application because the applicant failed to establish she was eligible for late registration, and because the applicant had failed to establish she had continuously resided in the United States since February 13, 2001.

On appeal, counsel once again asserts that the applicant has applied for TPS under the good cause exception for her failure to file during the initial registration period. Counsel asserts that the applicant has been dutifully trying to maintain her TPS since the submission of her initial application in 2001. Counsel requests that the AAO grant the “good faith exception” and approve the application.

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 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 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 March 23, 2001. On March 14, 2002, the Director, Texas Service Center, denied that application due to abandonment. The notice, which was sent to the applicant's address of record, was returned by the U.S. Postal Service as undeliverable. The applicant filed another TPS application [REDACTED] on September 24, 2002. On February 11, 2003, the Director, Texas Service Center, denied that application due to abandonment. The record contains no evidence that the notice was returned by the U.S. Postal Service as undeliverable. No motion was filed from the denial of that application.¹

The applicant filed the current TPS application on March 6, 2012.

On April 3, 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, conceded that the applicant did not fall within any of the categories for late registration. Counsel indicated that the applicant was applying for TPS under the good cause exception for her failure to file on a timely basis. Counsel states that the applicant has always used the services of a notary public and "due solely to incorrect information and many errors by the notary public [the applicant] hired to help her, [the applicant's] TPS registration has been denied and she has been unable to maintain status."

The director determined that the applicant had failed to adequately address her eligibility for late registration and denied the application.

Although counsel notes that the applicant was not assisted by an attorney but by a notary, there is no remedy available for an individual who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on her behalf. *See* 8 C.F.R. § 292.1. We only consider complaints based upon ineffective assistance against accredited representatives. *Cf. Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988)(requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel).

Counsel's brief on appeal has been noted. However, the "good cause exception" cannot be used to justify late initial filings as it is only implemented to justify registrants that had been previously *granted* TPS and failed to re-register during the extension period. Section 244(c)(3)(c) of the Act, 8 C.F.R. § 244.17(c). There is no evidence that the earlier TPS applications had been approved.

¹ 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).

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 has not submitted any evidence to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish her eligibility for late registration will be affirmed.

The second issue to be addressed is whether the applicant has established her continuous residence in the United States since February 13, 2001.

On April 3, 2013, the applicant was also requested to submit evidence establishing her qualifying continuous residence. Counsel, in response, indicated that the applicant has been physically present and continuously resided in the United States since January 1999. Counsel only provided a Maryland driver's license issued April 2, 2013 and an employment authorization (C19) issued June 20, 2012.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application.

On appeal, counsel once again indicates that the applicant has been physically present and continuously resided in the United States since January 1999. Counsel submits:

- An affidavit from [REDACTED] Texas, who indicates that he has been a personal friend of the applicant for over 20 years. The affiant indicates that at the time of her entry on January 6, 1999, the applicant resided at his mother's home at [REDACTED] Texas; that the applicant attended his family gatherings; and that during 2001 he took the applicant to her doctor's appointments.
- An affidavit from [REDACTED] Texas, who indicates that she met the applicant in December 2000 at child's birthday party. The affiant attested to the applicant's moral character.
- An affidavit from [REDACTED] Texas, who indicated that he met the applicant on January 6, 1999 at his residence, [REDACTED] Texas. The affiant attested to the applicant's moral character and to her residence at [REDACTED] Texas.
- An affidavit from [REDACTED] Texas, who indicated that upon her entry into the United States on January 6, 1999, the applicant resided with her and her family at [REDACTED] Texas. The affiant attested to the applicant's moral character.
- A photocopied receipt dated February 23, 2001.
- Copies of immigration documents relating to earlier TPS applications.

The above affidavits are not viewed as substantive to support a finding that the applicant has continuously resided in the United States during the requisite period. The only types of affidavits listed as acceptable evidence of an alien's continuous residence in the United States at 8 C.F.R. § 244.9(a)(2) are: affidavits supplied by employers; affidavits supplied by organizations with which a self-employed alien has done business; and, affidavits supplied by officials of organizations of which the applicant has been a member. The regulation at 8 C.F.R. § 244.9(a)(2) does not list affidavits of witness from friends, acquaintances, or family members as acceptable evidence of continuous residence during the requisite time frame. While such affidavits may be given some consideration under the provision of 8 C.F.R. § 244.9(a)(2)(vi)(L) as "any other relevant document," the evidentiary standard set forth at 8 C.F.R. § 244.9(a)(2) clearly gives greater evidentiary weight to contemporaneous documents as proof of an alien's continuous residence in the United States during the requisite time frame. As the applicant claims to have lived in the United States since 1999, it is reasonable to expect that she would have some type of contemporaneous evidence to support her claim. The applicant has, therefore, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for TPS on this ground will also be affirmed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Siddiqui v. Holder*, 670 F.3d at 741.

Beyond the director's decision, the applicant has also failed to provide sufficient evidence to establish 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). Accordingly, the application must be denied on this ground as well.

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.