



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAR 24 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: Self-represented

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, and because the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant provides copies of Form I-797C, Notice of Action, and a certified court document stemming from his arrest in April 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 TPS 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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until March 9, 2015, upon the applicant's re-registration during the requisite period.

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. 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 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); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The first issue to address is whether the applicant is eligible for late registration.

The record reflects that the applicant filed his initial TPS application () on April 27, 2001. On October 29, 2001, the Director, Nebraska Service Center, denied the application as the applicant failed to establish date of entry, continuous residence and continuous physical presence in the United States during the requisite periods. The AAO, in dismissing the appeal on March 6, 2002, determined that the evidence submitted on appeal was not sufficient to establish continuous residence and continuous physical presence in the United States during the requisite periods. No motion was filed from the dismissal of the appeal.

The applicant filed the current TPS application on March 16, 2012.

On September 20, 2012, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant, in response, only provided evidence to establish his continuous residence and continuous physical presence in the United States.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on April 8, 2013.

On appeal, the applicant indicates that he is eligible for late registration and, as evidence, submits copies of Form I-797C dated November 29, 2001 and January 9, 2002 relating to the initial Form I-290B, Notice of Appeal of Motion, filed on November 27, 2001.

Having an application for TPS during the initial registration period does not render an alien eligible for late registration under 8 C.F.R. § 244.2(f)(2). A previous application for TPS is not an application for adjustment of status, cancellation of removal, discretionary relief, recommendation against removal, or suspension of deportation. 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 has not submitted evidence that he has met one of those provisions outlined in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application on this ground will be affirmed.

The second issue to be addressed is the applicant's criminal history.

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. See 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.

On September 20, 2012, the applicant was also requested to provide certified judgment and conviction documents from the courts for all arrests, including:

1. On September 6, 2003, by the [REDACTED] false informing and public intoxication.
2. On December 23, 2007, by the [REDACTED] forgery and information of forgery, fraud-credit card, and operating without ever receiving a license.
3. On May 3, 2008, by the Sheriff's Office in [REDACTED] of operator never licensed.
4. On April 8, 2012, by the [REDACTED] of resisting law enforcement.

The applicant, in response, provided:

- For number one, certified case summary from the [REDACTED] Court, which indicated that on March 26, 2004, the applicant pled guilty to false informing, a violation of Indiana Code § 35-44-2-2(d)(1), a Class B misdemeanor. The applicant was sentenced to serve 180 days in the [REDACTED] County Jail, placed on probation for one year, ordered to perform 25 hours of community service and pay court costs. The remaining offense was dismissed. [REDACTED]
- For number two, certified case summary from the Clerk of Courts for [REDACTED] which indicated that on February 4, 2008, the applicant was convicted of no valid license, a violation of Indiana Code § 9-24-1-1, a Class C infraction. The remaining charges were dismissed. Cause no. [REDACTED]
- For number three, certified case summary from the Clerk, [REDACTED] Court, which indicated that on August 21, 2008, the applicant was convicted of no valid license, a violation of Indiana Code § 9-24-1-1, a Class C infraction. The charge of operating a motor vehicle while never receiving license was dismissed without prejudice. [REDACTED]

The director determined that the applicant had failed to provide the requested court disposition for the arrest on April 4, 2012, and denied the application. On appeal, the applicant submits a certified document from the Clerk of Courts for [REDACTED]. However, this document is not acceptable as it only relates to the issuance and disbursement of a bond; the final disposition of the offense of resisting law enforcement is not listed.

The applicant has failed to provide any evidence revealing the final court disposition of his arrest on April 8, 2012. The applicant is ineligible for TPS because of his failure to provide

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information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the director's decision to deny the application on this ground 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.