



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 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, the applicant asserts that he first entered the United States in 2000; that he did not apply for TPS during the initial registration period due to lack of knowledge of the immigration law; that he is eligible for late initial registration as he has been granted voluntary departure; and that he is currently under court proceedings.

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 first 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 contains a Form I-213, Record of Deportable/Inadmissible Alien, dated September 10, 2009, which indicates that the applicant was apprehended near [REDACTED] by U.S. Customs and Border Protection. The applicant admitted that he entered without inspection by swimming across the [REDACTED] on September 6, 2009 near [REDACTED] Texas port of entry. The applicant further admitted that on August 10, 2009, he departed his native country, El Salvador; that he travelled by bus to the border of Guatemala/Mexico where he legally entered; that in Mexico he travelled by train and afoot and arrived at the northern Mexican border on September 4, 2009; and that he entered the United States to seek employment and to reside in the state of New Jersey. The applicant was found inadmissible to the United States, under section 212(a)(7)(A)(i)(I) of the Act¹ and processed for expedited removal. A Form I-860, Notice of Order of Expedited Removal, was issued and the applicant was expeditiously removed from the United States under section 235(b)(1) of the Act². The Form I-296, Notice to Alien Ordered Removed/Departure Verification, shows that the applicant was removed to El Salvador via a Justice Prisoner and Alien Transportation System (JPATS) flight on October 8, 2009.

The record contains an additional Form I-213 dated April 6, 2010, which indicates that the applicant was apprehended at the train station in Spokane, Washington by U.S. Customs and Border Protection. The applicant admitted that he last entered the United States without inspection on December 1, 2009, near [REDACTED], and that his intentions were to seek employment and to reside in the United States. On April 6, 2010, a Form I-200, Warrant for Arrest of Alien, and Form I-862, Notice to Appear, were issued and the applicant was placed in removal proceedings. On November 6, 2013, the immigration judge administratively closed the case.³

The record reflects that the applicant filed his initial TPS application on March 6, 2012.

On March 4, 2013, the director determined that the applicant had failed to establish he was eligible for late registration and denied the application.

On appeal, the applicant asserts that he was granted voluntary departure from the United States. The record, as presently constituted, is devoid of any evidence to show that the applicant was granted voluntary departure, and the applicant has not provided any evidence to support his assertion. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of*

¹ Section 212(a)(7)(A)(i)(I) of the Act shall not be applied in the determination of an alien's inadmissibility under section 244 of the Act. Section 244(c)(2)(A)(i) of the Act; 8 C.F.R. § 244.3(a).

² Section 235(b)(1)(A)(i) provides - If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 212(a)(6)(C) or 212(a)(7), the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 208 or a fear of persecution.

³ Administrative closing of a case does not result in a final order. It is merely an administrative convenience which allows the removal of cases from the calendar in appropriate situations. *See Matter of Gutierrez-Lopez*, 21 I&N Dec. 479 (BIA 1996).

California, 14 I&N Dec. 190 (Reg. Comm. 1972). As noted above, the applicant was expeditiously removed from the United States on October 8, 2009.

On appeal, the applicant does not provide any evidence to establish his eligibility as a late registrant. The applicant's current removal proceeding does not establish late registration eligibility and was neither pending nor did it occur at the time of the initial registration period (March 9, 2001, through September 9, 2002). 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 any evidence that he has met one of those provisions outlined in 8 C.F.R. § 244.2(f)(2). There is no provision to waive the registration requirement based on the applicant's assertion that he lacks knowledge of the immigration laws.

Consequently, the director's decision to deny the application on this ground will be affirmed.

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.

The applicant indicated on his TPS application to have entered the United States in January 2000. Along with his application, the applicant submitted a copy of his New Jersey identification card issued in 2003 with an expiration date of June 19, 2007,⁴ and a copy of his El Salvadoran passport issued on February 12, 2008 by the Consulate General in Manhattan, New York.

In her decision, the director noted that USCIS records reflected that the applicant was apprehended on September 10, 2009 after crossing the border into the United States without inspection on September 6, 2009. The director determined that the applicant could not establish continuous residence and continuous physical presence in the United States due to his 2009 entry.

On appeal, the applicant reiterates his claim to have first entered the United States in January 2000. As evidence to support this claim, the applicant provides:

- An affidavit from [REDACTED] who indicated that he has known the applicant since his arrival in the United States in June 2000. The affiant attested to the applicant's moral character.
- His son's July 23, 2007 birth certificate from the state of New Jersey.
- A photocopy of an earnings statement.

The applicant's statement on appeal has been considered. However, the above documents submitted throughout the application process do not establish that the applicant has been residing in

⁴ A New Jersey ID card is valid for four years. See [REDACTED]

the United States since February 13, 2001 and has been physically present in the United States since March 9, 2001.

The identification card and passport only serve to establish that the applicant was in the United States in 2003 and 2008; they do not establish continuous residence and continuous physical presence. The earning statement lacks probative value as the name and date of issuance are indecipherable. The birth certificate only serves to establish that the applicant had a son born on July 23, 2007; it does not establish that the applicant was physically present in the United States on that date. [REDACTED] affidavit regarding the applicant's claimed presence in the United States since June 2000 is not supported by any corroborative evidence. As the applicant claims to have lived in the United States since 2000, it is reasonable to expect that he would have some type of contemporaneous evidence to support his claim. Affidavits from acquaintances are not, by themselves, persuasive evidence of residence or presence.

At the time of his apprehension on September 10, 2009, the applicant admitted to no residence or employment in the United States. Therefore, the applicant's claim of continuous residence in the United States since January 2000 raises questions of credibility.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

The applicant's expedited removal from the United States does not satisfy the criteria for brief, casual, and innocent absence as provided in 8 C.F.R. § 244.1. The applicant has not provided sufficient evidence to establish residence and physical presence in the United States during the requisite periods, and has also failed to maintain continuous residence and continuous physical presence in the United States based on his expedited removal on October 8, 2009. 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.