



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE:

NOV 12 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:

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 native and 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 5, 2012, the director denied the TPS application because the applicant had failed to establish: 1) late registration eligibility; 2) he had continuously resided in the United States since February 13, 2001, and 3) he had been continuously physically present in the United States since March 9, 2001.

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 July 15, 2016, 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); *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 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.

On or about December 21, 1995, the applicant was included on his common-law wife's Form I-589, Application for Asylum and Withholding of Removal. In a notice dated September 13, 2007, the Director, Los Angeles Asylum Office, informed the applicant that his Form I-589 was denied as of May 31, 2007.

The record reflects that the applicant submitted a TPS application [REDACTED] on September 4, 2006. On October 16, 2006, it was rejected as the required fee was not provided.

The applicant filed his initial TPS application [REDACTED] on November 7, 2006. On November 1, 2007, the Director, Vermont Service Center, denied the application due to abandonment.<sup>1</sup> No motion was filed from the denial of that application.<sup>2</sup>

In the instant case, the applicant had the opportunity to file another TPS application. The record contains no evidence that the applicant had been advised of the denial of his Form I-589 on May 31, 2007. Therefore, the applicant had a 60-day period immediately following the notice of September 13, 2007 to file an application for late registration in order to meet the requirements described in 8 C.F.R. § 244.2(f)(2)(ii). 8 C.F.R. § 244.2(g). The applicant, however, failed to do so.

The applicant filed a second TPS application [REDACTED] on August 25, 2010 and indicated that it was his first application to register for TPS. The director, in denying the application, on September 5, 2012 determined that the applicant was ineligible for late registration as a previous filed TPS application did not meet the definitions of a qualifying condition under 8 C.F.R. § 244.2(f)(2). The director also denied the application because the applicant failed to establish continuous residence and continuous physical presence in the United States during the requisite periods. The applicant was informed that, via a fingerprint analysis, the Federal Bureau of Investigation (FBI) revealed an arrest in El Salvador on October 24, 2006. The director determined that this absence from the United States did not meet the criteria of brief, casual and innocent and therefore interrupted his continuous physical presence.

The applicant filed the current TPS application on April 9, 2012. On September 5, 2012, the director also denied this application as it was determined that the applicant had not provided any new and compelling evidence that overcame the reason for denying the initial TPS application. Specifically, the applicant had failed to establish: 1) late registration eligibility; 2) he had continuously resided in the United States since February 13, 2001; and 3) he had been continuously physically present in the United States since March 9, 2001. The applicant was informed that, via a fingerprint analysis, the FBI revealed an arrest in El Salvador on October 24, 2006. The

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<sup>1</sup> The applicant failed to submit evidence establishing his identity, continuous residence since February 13, 2001 and continuous physical presence since March 9, 2001 in the United States as requested in a notice dated April 19, 2007.

<sup>2</sup> 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).

director determined that this absence from the United States did not meet the criteria of brief, casual and innocent and therefore interrupted his continuous physical presence.

On appeal, counsel provided a marriage certificate indicating that the applicant was married on April [REDACTED] in Los Angeles, California. The applicant, however, indicated on his TPS application filed August 25, 2010, that his marriage ended in 2007.<sup>3</sup>

The applicant is not eligible for late registration under 8 C.F.R. § 244.2(f)(2)(iv) as he is not a spouse of an alien currently eligible to be a TPS registrant due his marriage ending in 2007.

On appeal, counsel neither addresses the finding of the applicant's ineligibility as a late registrant nor provides any evidence to establish his eligibility as a late registrant. The provisions for late registration were created in order to ensure that TPS benefits were made available to individuals who did not register during the initial registration period for the various circumstances specifically identified in the regulations at 8 C.F.R. § 244.2(f)(2) and (g). The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration in 8 C.F.R. § 244.2(f)(2) and (g). Consequently, the director's decision to deny the application for TPS 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.

On appeal, the following photocopied evidence was provided:

- A passport issued on May 7, 2008 at the El Salvador Consulate General in Los Angeles, California, and an El Salvador identification card issued on December 21, 2010.
- Wage and Tax Statement (Form W-2) for 1999 to 2001, 2003, 2004 and for 2006 to 2009.
- Uncertified U.S. Individual Income Tax Return (Form 1040) for 1999 to 2001 and for 2003 to 2009.
- Pay stubs from January 15, 2006 through August 11, 2006 and October 28, 2006 through November 3, 2006.
- A bank statement showing ATM transactions during the period October 6, 2006 through November 6, 2006, and balance summaries from [REDACTED] addressed to the applicant indicating that a checking and savings account had been opened on February 12, 2001 and January 20, 2012, respectively.
- Several pay stubs from [REDACTED] for January 15, 2006 through August 11, 2006 and October 28, 2006 through November 3, 2006.

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<sup>3</sup> On his current TPS application, Part 3, Information about your spouse and children, was left blank.

- Several employment authorization cards under category C08 valid from September 2, 1999 through September 21, 2007, and an employment authorization card issued under C19 valid from June 26, 2012 through September 9, 2013.
- California driver's licenses issued on July 27, 2001, March 26, 2004 and December 15, 2010, and a California identification card issued on May 24, 2000.
- Several identification cards from [REDACTED] School valid from March 31, 2011 through June 30, 2012.
- A one-year car insurance policy from [REDACTED] effective August 3, 2001.
- Previous issued USCIS documents.

Based on the documents above, we conclude that the applicant has provided sufficient evidence to establish his residence and physical presence in the United States from February 13, 2001 through August 2006.

Counsel, on appeal, indicated that the current director's decision was erroneous as the applicant had not interrupted his continuous residence and continuous physical presence in the United States based on an alleged arrest in El Salvador. Counsel provided a copy of a pay stub from [REDACTED], and indicated that it showed that the applicant "was in the United States and working the week after the alleged incident took place, creating a factual impossibility for the argument asserted."

On September 4, 2013, we sent a notice to the applicant informing him that the evidence submitted on appeal were not sufficient to overcome the director's findings. Specifically, the ATM transactions of October 23 and 26, 2006 were of no probative value as they did not establish that the applicant conducted the transactions, and that the pay stubs (January 15, 2006 through August 11, 2006 and October 28, 2006 through November 3, 2006) had little probative or no probative value as they did not cover the period in question. The applicant was advised to submit uninterrupted pay stubs for the months of September 2006 and October 2006, and a letter signed and attested to, under penalty of perjury, from his former employer, [REDACTED] detailing the exact periods of his employment and of his layoffs.

Counsel, in response, provided additional documents including; a) a letter from [REDACTED], president of [REDACTED] who indicated that the applicant was in his employ from January 21, 2002 to October 27, 2009; and b) pay checks from [REDACTED] addressed to the applicant along with deposit receipts from [REDACTED] all dated October 13, 20, and 27, 2006 and November 6, 2006.

However, the fact that the arrest of October 24, 2006 was obtained *via a fingerprint analysis* and no documentation from the El Salvadoran authorities has been submitted confirming or denying the arrest of the applicant, it is determined that the applicant has failed to credibly establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). It is incumbent upon the applicant to

resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Consequently, the director's decision to deny the application for TPS on these grounds will also be affirmed.

Assuming, arguendo, the applicant has presented certified evidence from the El Salvadoran authorities refuting the FBI report, the applicant would still remain ineligible for the benefit sought as he had failed to establish late registration eligibility. 8 C.F.R. § 244.2(f)(2) and (g).

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.