



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **AUG 18 2015**

FILE #: [REDACTED]  
APPLICATION RECEIPT #: [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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the application. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is 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. § 1254a. On October 10, 2014, the director denied the application because the applicant failed to establish eligibility for late registration, continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001 in the United States. The director also denied the application because the applicant failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant asserts that he is eligible for late registration as a TPS application was filed during the initial registration period. The applicant also asserts that the court disposition for his marijuana charge does not list the final disposition because the charge was expunged and, therefore, the court is unable to provide additional documentation. The applicant resubmits the court dispositions relating to his assault and reckless endangerment charges. The applicant further submits additional evidence in an attempt to establish his continuous residence and continuous physical presence in the United States during the requisite periods.

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, as defined in section 101(a)(21) of the Act, of a foreign 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. *Id.*

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. *Id.*

Persons applying for TPS offered to 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 Salvadorans has been extended several times, with the latest extension valid until September 9, 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. 8 C.F.R. § 244.9(b). To meet this burden of proof the applicant must provide supporting documentary evidence of eligibility apart from the applicant's own statements. *Id.*

We conduct 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 be addressed is whether the applicant is eligible for late registration.

To meet the initial registration requirements in 8 C.F.R. § 244.2(f)(1), Salvadoran applicants must have filed TPS applications during the initial registration period, March 9, 2001 through September 9, 2002. If applicants did not file their initial TPS applications during this time period, to qualify for TPS they must meet the late registration requirements as stated above in 8 C.F.R. § 244.2(f)(2) or (g). Specifically, to qualify for late registration, the applicant must provide evidence that during the initial registration period (March 9, 2001 through September 9, 2002) the applicant 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 record reflects that the applicant filed an initial Form I-821, Application for Temporary Protected Status, on June 14, 2002. On May 1, 2003, the application was denied due to abandonment. On December 12, 2003, the applicant filed an appeal. The director treated the untimely appeal as a motion to reopen pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(2).<sup>1</sup> On February 11 2004, the director denied the motion, as it did not meet the requirements of a motion to reopen and motion to reconsider.

The applicant filed a second TPS application on February 1, 2005 and indicated that he was re-registering for TPS or renewal of temporary treatment benefits. On August 16, 2005, the application for re-registration was denied because the applicant's initial TPS application had been denied, and as such, the applicant was not eligible to apply for re-registration for TPS. On October 20, 2005, the applicant filed an appeal. The director treated the untimely appeal as a motion to reopen pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(2). On December 13, 2005, the director denied the motion, as it did not meet the requirements of a motion to reopen and motion to reconsider.

The applicant filed the current TPS application on July 25, 2013 and indicated that it was his first application to register for TPS. Any TPS application subsequently submitted by the same applicant after an initial application is filed and a decision rendered must be considered as either a request for re-registration or as a new filing for TPS benefits. The director treated the application as a late registration, as the applicant did not have a granted TPS application.

In a request for evidence, dated April 16, 2014, the applicant was requested to submit evidence establishing eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant, however, did not submit any evidence establishing late registration eligibility.

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<sup>1</sup> The regulation states if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

The applicant, on appeal, implies that submitting a TPS application during the initial registration renders him eligible for late initial registration. However, the provisions for late registration detailed in 8 C.F.R. § 244.2(f)(2) were not created to allow individuals 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 individuals who did not register during the initial registration period for the various circumstances specifically identified in the regulations. Having an application for TPS during the initial registration period does not render an individual eligible for late registration under 8 C.F.R. § 244.2(f)(2).

The applicant, on appeal, has also not submitted evidence that he has met one of the provisions outlined in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision that the applicant had failed to establish his eligibility for late registration will be affirmed.

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

We find that the Forms W-2, wage and tax statements, pay stubs, and account transcripts from the Internal Revenue Service submitted throughout the application process establishes the applicant's continuous residence and continuous physical presence in the United States from 1999 to 2002, and from 2004 to 2013.

The applicant, however has failed to submit evidence to establish his residence and physical presence in the United States for 2003. The applicant has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will be affirmed.

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. 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. 8 C.F.R. § 244.1. 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. *Id.*

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.

The record reflects that:

- On [REDACTED] in the Circuit Court for [REDACTED] County, Maryland, the applicant was charged with possession of marijuana, driving motor vehicle while license is suspended, and failure to stop before entering highway from private driveway.
- On [REDACTED] and [REDACTED], the applicant was arrested in Maryland for assault in the second degree and reckless endangerment.

In the request for evidence, dated April 16, 2014, the applicant was requested to provide certified judgment and conviction documents from the courts for all arrests. The applicant was advised to provide a police report or court documentation that states, in grams, the amount of marijuana involved for any charges involving possession of marijuana.

The evidence of record indicates that on [REDACTED] in the District Court of Maryland for [REDACTED] County, a nolle prosequi was entered for each assault and reckless endangerment offense. The applicant submitted a receipt from the District Court of Maryland for [REDACTED] County dated [REDACTED] relating to a petition for expungement for reckless endangerment and assault in the second degree offenses for both dates.

The applicant submits a criminal system inquiry from the District Court of Maryland for [REDACTED] County, which indicates that on [REDACTED] the applicant was arrested for possession of marijuana. This document, however, does not identify the applicant's plea and final court disposition for the charge.

The record contains case information for the applicant's marijuana offense, which indicates that he received probation before judgment and was placed on probation for one year.

Maryland Code § 6-220(b) addresses probation before judgment, in part, as:

- (1) When a defendant pleads guilty or nolo contendere or is found guilty of a crime, a court may stay the entering of judgment, defer further proceedings, and place the defendant on probation subject to reasonable conditions if:
  - (i) the court finds that the best interests of the defendant and the public welfare would be served; and
  - (ii) the defendant gives written consent after determination of guilt or acceptance of a nolo contendere plea.

As described in Maryland Code § 6-220(b), in order for an individual to receive probation before judgment, a plea of guilty or nolo contendere would have been entered by the individual or the court adjudged a guilty finding. Combined with the 12-month probation received, which is a form of

punishment, the applicant's marijuana charge would constitute a conviction for immigration purposes. Section 101(a)(48)(A) of the Act

In applying the definition of a conviction under section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A) the Board of Immigration Appeals found that there is a significant distinction between convictions vacated on the basis of a procedural or substantive defect in the underlying proceedings and those vacated because of post-conviction events, such as rehabilitation or immigration hardships. Thus, if a court vacates a conviction based on a defect in the underlying criminal proceedings, the respondent no longer has a "conviction" within the meaning of section 101(a)(48)(A) of the Act. If, however, a court vacates a conviction for reasons unrelated to the merits of the underlying criminal proceedings, the respondent remains "convicted" for immigration purposes. *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003); *see also Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999).

The applicant, on appeal, has not submitted the complete court proceedings for the marijuana charge, and the requested police report/court documentation listing, in grams, the amount of marijuana involved. The applicant has not submitted evidence that the marijuana charge was expunged because of a legal defect in the underlying criminal proceedings. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The applicant therefore remains ineligible for TPS because of his failure to provide the final disposition for the marijuana charge necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

The appeal is dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal. In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.