



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **AUG 31 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:

[Redacted]

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) 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 August 18, 2014, the director denied the application because the applicant failed to establish eligibility for late registration. The director also denied the application because the applicant had failed to establish continuous residence since February 13, 2001 in the United States.

On appeal, counsel submits a brief disputing the director's decision.

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

We find that the account transcripts from the Internal Revenue Service for the tax periods ending 2001 through 2005, and the earning statements from March 1, 2006 through December 7, 2013 are sufficient evidence to establish the applicant's claim of continuous residence and physical presence in the United States during the requisite periods. 8 C.F.R. § 244.2(b) and (c). Accordingly, the director's decision to deny the application for failure to establish continuous residence since February 13, 2001 will be withdrawn.

The third 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 applicant filed this TPS application on December 11, 2013. The applicant through counsel indicated that he had a pending asylum application during the initial registration period.

The director determined that the applicant was ineligible for late registration under 8 C.F.R. § 244.2(f)(2)(ii) as his asylum application was denied on May 6, 1997 prior to the TPS designation for El Salvador on March 9, 2001.

On appeal, counsel asserts that the applicant is eligible for late registration as his asylum application was pending during the initial registration period and submits a copy of a Form I-797C, Notice of Action, dated June 7, 2001 relating to a Form I-765, Application for Employment Authorization, and the applicant's employment authorization card valid from October 12, 2001 through October 11, 2002.

The record reflects that on June 4, 1993, the applicant filed a Form I-589, Application for Asylum and Withholding of Deportation. A Form I-221, Order to Show Cause and Notice of Hearing, was issued and served on the applicant on August 17, 1996. In a notice dated November 18, 1996, the [redacted] Asylum Office advised the applicant that his application for asylum and withholding of deportation were denied as he had not established a clear probability of persecution. The applicant was advised that any employment authorization that had been issued as a result of having a pending application for asylum would expire 60 days from the date of the notice or on the expiration date of the employment authorization, whichever period was longer. The applicant was further advised that he could renew his request for asylum before an immigration judge in immigration proceedings. By order of the immigration judge, on May 6, 1997, the deportation

proceedings were terminated. There is no evidence in the record that the applicant had reapplied for asylum or that his request for asylum was renewed before the immigration judge¹.

Documents contained in the file, including USCIS data records, indicate that employment authorization cards pursuant to 8 C.F.R. 274a.12(c)(8) were continuously issued to the applicant, the lasted valid from August 8, 2012 to August 7, 2013. Those employment authorization cards, however, were erroneously issued as there was no pending asylum application. We are not required to approve applications where eligibility has not been demonstrated, merely because the applicant was receiving employment authorization in error. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988).

In this case, the record indicates that the applicant's asylum application was denied prior to the initial TPS registration for El Salvadorans. The applicant has therefore not demonstrated that he is eligible for TPS under the late initial registration provisions of 8 C.F.R. § 244.2(f)(2)(ii). The applicant has failed to establish that he has met any of the remaining provisions for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS on this ground will be affirmed.

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.

¹ It is noted that the current version of 8 C.F.R. § 208.14 indicates that an immigration judge may grant or deny asylum in the exercise of discretion to an applicant who qualifies as a refugee. The regulation further indicates the conditions under which asylum officers shall deny, refer, or dismiss applications. However, in 8 C.F.R. § 208.14, revised January 1, 1996, applicable at the time of the applicant's asylum denial decision, the regulations state that an asylum officer may grant asylum in the exercise of discretion to an applicant who qualifies as a refugee, except for an alien who is a crewman, stowaway, or temporarily excluded under section 235(c) of the Act.