



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: FEB 18 2015 Office: VERMONT SERVICE CENTER FILE: [Redacted]

IN RE: Applicant: [Redacted]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:
[Redacted]

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,


for 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 The initial decision of the director will be withdrawn and the case will be remanded for further consideration and action.

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. §1254. On May 23, 2014, the director denied the application because the applicant failed to submit documents necessary for the adjudication of the application.

On appeal, the applicant submits the requested documents.

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 as designated by the Attorney General, now the Secretary, Department of Homeland Security (Secretary), 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 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 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.

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 United States 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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period from March 9, 2001 through September 9, 2002, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed 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 her initial application on July 16, 2013.

On February 10, 2014, the director requested the applicant to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing her identity, and a complete Form I-821, Application for Temporary Protected Status.¹ The applicant, in response, provided a copy of an asylum application, which she filed on June 10, 1995, that was pending at the time of the initial registration period. The director accepted the asylum application as sufficient evidence to establish her eligibility for late registration of TPS. The director found that the applicant had not

¹ The record reflects that the original Form I-821 submitted by the applicant did not have all the questions in Part 4 answered. Specifically, the applicant did not provide response to Part 4, section 2b(iii) and 2p(v).

submitted a complete Form I-821 and evidence of her identity and denied the application accordingly.

The director did make a determination as to whether the applicant met the continuous physical presence and continuous residence in the United States stipulated in 8 C.F.R. § 244.2(b) and (c).

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.

The AAO adjudicates appeal on a *de novo* basis.²

On appeal, the applicant submits a copy of a properly completed Form I-821. This document has satisfied the director's request. Accordingly, the director's decision to deny the applicant's TPS on this basis will be withdrawn.

On appeal, the applicant submits a copy of her state of California driver license as evidence of her identity, which she indicates was previously submitted in response to the initial request for evidence from the director. We find that the applicant's California driver license is sufficient evidence to establish her identity pursuant to 8 C.F.R. § 244.9(a)(1)(ii). Therefore, the applicant has overcome her failure to establish her identity and the director's finding on this ground will be withdrawn as well.

Since the denial of the initial application is being withdrawn, the case will be remanded to the director for further adjudication of the TPS application to determine whether the applicant has met the requirements for continuous residence and continuous physical presence in the United States. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS offered to Salvadorans. Should the decision be adverse to the applicant, the director will certify it to the AAO for review.

ORDER: The matter is remanded for further action consistent with this decision.

² The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).