

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



(b)(6)

Date: **JUL 17 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. § 1254

ON BEHALF OF APPLICANT:

NO REPRESENTATIVE OF RECORD

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 Acting Center Director, Vermont Service Center denied the application for Temporary Protected Status and the appeal is now before the Administrative Appeals Office. The appeal will be dismissed.

The applicant is 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. §1254a. On June 11, 2014, the acting center director denied the application because the applicant failed to establish he was eligible for late registration. The acting center director also denied the application because the applicant had failed to establish he had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant asserts he qualifies for late registration because he had an asylum application pending on appeal during the initial registration period for TPS. He also submits evidence to establish his qualifying continuous residence and continuous physical presence in the United States.

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 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 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. 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 reflects that the applicant filed his initial TPS application on December 31, 2008.

On January 13, 2014, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant, in response, submitted three immigration forms; one appointment letter dated December 4, 2001 indicating that he had an appointment to discuss his adjustment of status for January 29, 2002, a letter dated August 8, 2001 notifying him that his fingerprints would be taken on August 17, 2001 and a letter requesting a visa number dated December 12, 2000. The director determined that the applicant's evidence was insufficient to establish he was eligible for late registration.

The applicant asserts that he is eligible for late registration because he had an asylum application pending on appeal during the initial registration period, March 9, 2001 through September 9, 2002. However, the applicant's asylum application was denied on October 25, 1995 by an immigration judge. The applicant filed an untimely appeal and the immigration judge's denial decision was final on November 7, 1995, per the Board of Immigration Appeals in its decision dated June 27, 1997. As such, the record does not contain any information to show that the applicant's asylum application was pending during the initial registration period.

The record also contains an Application to Register Permanent Residence or Adjust Status (Form I-485) that was received on December 26, 2000. The Form I-485 was rejected on January 29, 2002. Even if the applicant's adjustment application had rendered him eligible for late registration, 8 C.F.R. § 244(g) requires late registration to be filed within the 60-day period immediately following the expiration or termination of conditions described in 8 C.F.R. § 244.2(f)(2). The applicant adjustment application was rejected on January 29, 2002 and the applicant did not submit his initial TPS application until December 31, 2008.

The applicant contends that the Board of Immigration Appeals (BIA) determined that administrative procedures will not prevent an alien from asserting the right to TPS in removal proceedings, citing to *Matter of Barrientos*, 24 I & N Dec. 100 (BIA 2007). He asserts that in *Barrientos*, the respondent did not register during the initial registration period and the immigration judge did not use the late registration analysis in determining TPS eligibility. However, *Barrientos* addressed whether an immigration judge has the jurisdiction to review the denial of TPS benefits, but did not reach the matter of late registration eligibility. *Id.*

The applicant has not submitted sufficient evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion 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 his continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On January 13, 2014, the applicant was requested to submit evidence establishing continuous residence and continuous physical presence in the United State during the qualifying periods. In response, the applicant submitted the following:

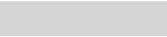
- a copy of the applicant's employment authorization card valid from December 12, 2013 until March 9, 2015,
- his registration and payment information for a martial arts class dated November 7, 2013,
- a copy of the applicant's commercial driver's license valid until September 10, 2015,
- tax returns and/or wage and earnings statements for 2009-2012, 2002-2007, 2000 and 1996,
- pay stubs dated February 7, 2009 and January 18, 2008,
- a vehicle transfer form dated April 16, 2007,
- a driver's license dated July 18, 2006,
- immigration appointment letters and a visa request form,
- copies of pages from the applicant's passport,
- a copy of the applicant's employment authorization card valid from November 21, 2001 until November 20, 2002,
- the applicant's school identification dated June 1997,
- the applicant's car insurance policy dated April 23, 1997,
- the applicant's monthly tax statement dated January 1, 1997,
- a [REDACTED] bill with a due date of March 15, 1997,
- a [REDACTED] bill with a due date of November 28, 1996, and
- the applicant's bank statement dated November 27, 1996.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS because the documentation was insufficient and did not cover the entire period.

The applicant on appeal asserts that he entered the United States prior to March 9, 2001, and has had continuous residence in the United States since his initial entry date. The applicant also indicates that he has had continuous physical presence since December 17, 1991. To prove his assertion, the applicant submits the following documentation, some of which was previously submitted:

- a photocopy of the applicant's passport,
- a photocopy of the applicant's birth certificate,
- a copy of the applicant's marriage certificate, which took place in California in 1995,
- a copy of the applicant's Social Security card,
- tax returns and/or wage and earnings statements and/or other tax documentation for 2009-2011, 2002-2007 and 2000.

Evidence in the record, such as various tax documents, a driver's license and a vehicle transfer form, demonstrate that the applicant was physically and continuously present in the United States for 2000, 2002-2007, and 2009-2012. However, there is no documentation to demonstrate that he continuously resided in the United States in 2008, as only one pay stub was provided for that year. Moreover, there was limited documentation to show that he had continuous residence from 2013 through present, although some documentation including a receipt/registration document for a martial arts class was provided dated in 2013 and the applicant's commercial driver's license is valid through September 2015. In addition, there is limited documentation to show that the applicant was present in the United States in 2001. Although the record contains a copy of his employment



authorization card, which was valid from November 21, 2001 until November 20, 2002, this documentation does not cover the entire year and/or establish that he was actually working in the United States during that time.

The applicant has not submitted sufficient credible evidence to establish, for all requisite periods, continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. 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 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.