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



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: **MAY 20 2015**

[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 application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. 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 May 14, 2014, the director denied the application because the applicant failed to establish he was eligible for late registration. The 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, through counsel, asserts that he is eligible for late initial registration for TPS because he had a pending asylum application. The applicant also asserts that the director erred by disregarding evidence concerning his continuous residence and continuous physical presence.

We have reviewed all of the evidence and have made a *de novo* decision based on the record and our assessment of the credibility, relevance and probative value of the evidence.¹

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:

¹The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

- (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 parole; 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.²

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 the instant TPS application on June 13, 2013. On March 26, 2014, the director notified the applicant of her intent to deny his application. In addition, she requested that the applicant submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2) and evidence of his identity, nationality, and continuous physical presence and continuous residence. The applicant, in response, provided documentation establishing his El Salvadoran nationality and his identity, and limited evidence relating to his residence and physical presence in the United States. As a result the director determined that the applicant had failed to establish he was eligible for late registration.

On appeal, counsel asserts that the applicant is eligible for late initial registration for TPS because he has a pending asylum application.

The record reflects that on July 15, 1993, the applicant filed a Form I-589, Application for Asylum and for Withholding of Removal. According to USCIS records, the applicant's asylum application was administratively closed on April 6, 2009, the day the applicant failed to appear at his scheduled asylum interview.

Administrative closing of a case does not result in a final order. It is merely an administrative convenience which allows the removal of cases from the calendar in appropriate situations. *See Matter of Gutierrez-Lopez*, 21 I&N Dec. 479 (BIA 1996). Either party desiring further action could request reopening the applicant's asylum application and re-calendar the matter. Thus no final decision on the applicant's asylum application has been issued. Accordingly, because the asylum application is still pending or subject to further review or appeal, the applicant is eligible for late initial registration under 8 C.F.R. § 244.2(f)(2)(ii). Therefore, the director's finding that the applicant is ineligible for late initial registration for TPS will be withdrawn.

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.

In response to the director's request that he submit evidence establishing continuous residence and continuous physical presence in the United State during the qualifying periods, the applicant submitted documents from 1996, 1997, and 1999; receipts dated 2001 and 2003; the applicant's Social Security card; and his paystubs dated between 2000 and 2002.

² The record reflects that the applicant filed an initial TPS application on January 31, 2012, that was denied on May 8, 2012, and there was no appeal of the denial decision.



The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS, because the evidence did not establish his continuous residence and continuous physical presence in the United States throughout the requisite period.

With his appeal the applicant submits copies of his employment authorization documents issued in 1993, 1994, and 1998; a [REDACTED] driver license, issued on February 1, 1996; and, a Social Security statement, dated March 2, 2011, which reflects reported earnings for the years 1994 through 2009. According to the statement, earnings for the year 2010 were not yet recorded.

The documentation provided establishes the applicant's residence and presence in the United States for the year 2001. However, the applicant has not submitted sufficient credible evidence to establish continuous residence and continuous physical presence in the United States throughout the requisite period to the date the applicant filed his TPS application on June 13, 2013. Specifically, the Social Security statement reflects no earnings for the years 2004, 2006, and 2008. Although this statement alone would not establish the applicant's residence for the years listed on the statement, the applicant provides no additional evidence to establish his continuous physical presence and continuous residence during these years. Also, the record lacks evidence for the years 2010, 2011, 2012, and to the date of filing the TPS application on June 13, 2013.

The applicant has not established 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 must 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.