U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
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Name: QUINTANILLA-ARANIVA, RODO... **A 094-436-078**

Date of this notice: 3/22/2018

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Wendtland, Linda S.
Crossett, John P.
Pauley, Roger

Userteam: Docket

File: A094 436 078 – Dallas, TX

Date:

MAR 22 2018

In re: Rodolfo QUINTANILLA-ARANIVA

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jonathan Earthman, Esquire

ON BEHALF OF DHS: Marium S. Uddin
Assistant Chief Counsel

APPLICATION: Temporary protected status

On April 19, 2017, an Immigration Judge denied the respondent's application for Temporary Protected Status ("TPS"). The respondent, a native and citizen of El Salvador, now appeals. The appeal will be sustained.

We review an Immigration Judge's findings of fact, including findings regarding witness credibility and what is likely to happen to the respondent, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i); *Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015). We review all other issues, including questions of law, discretion, and judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

El Salvador was designated for TPS on March 9, 2001, as a result of devastation caused by a series of severe earthquakes. *See* Designation of El Salvador Under Temporary Protected Status Program, 66 Fed. Reg. 14,214 (Mar. 9, 2001); *see also United States v. Orellana*, 405 F.3d 360, 361-62 (5th Cir. 2005). The initial designation of El Salvador for TPS stated that nationals of El Salvador "who have been 'continuously physically present' in the United States since March 9, 2001, and have 'continuously resided' in the United States since February 13, 2001, may apply for TPS within the registration period that begins on March 9, 2001 and ends on September 9, 2002." 66 Fed. Reg. at 14,214; *see also* sections 244(c)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1254a(c)(1)(A); 8 C.F.R. § 244.2. This designation has been extended 11 times. *See* Extension of the Designation of Temporary Protected Status for El Salvador; Automatic Extension of Employment Authorization Documentation for El Salvadorian TPS Beneficiaries, 81 Fed. Reg. 44,645 (July 8, 2016).[1]

The respondent submitted an application for TPS on May 8, 2001. On October 24, 2002, the United States Citizenship and Immigration Services ("USCIS") requested additional evidence in support of the application. The respondent did not respond to the request, and on April 17, 2003,

[1] The Secretary for the Department of Homeland Security recently announced the termination of the designation of El Salvador for TPS effective September 9, 2019. *See* Termination of the Designation of El Salvador for Temporary Protected Status, 83 Fed. Reg. 2654 (January 18, 2018).

the USCIS deemed the application abandoned (IJ at 2; Exh. 8). The respondent sought de novo review of his eligibility for TPS in these removal proceedings. *See* section 244(b)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1254a(b)(5), 8 C.F.R. §§ 1244.10(d)(1), 1244.11, 1244.18(b); *Matter of Lopez-Aldana*, 25 I&N Dec. 49, 49 (BIA 2009) (clarifying *Matter of Barrientos*, 24 I&N Dec. 100 (2007)).

We will reverse the Immigration Judge's denial of TPS. First, the Immigration Judge committed clear error when he concluded that the respondent did not establish continuous residence since February 13, 2001 (IJ at 6-7). The respondent provided wage earning statements covering pay periods from January 6, 2001, through March 10, 2001 (Respondent's Br. at 6; Tr. at 111; Exh. 2, Tab E). The Immigration Judge rejected the wage statements because they were "stale" and could not be verified (IJ at 7). The respondent testified, however, that he has been continuously residing in the United States since 1998, and the Immigration Judge did not find that testimony to be not credible (IJ at 5; Respondent's Br. at 4; Tr. at 93, 95, 99). Thus, we accept that testimony as true. *See* section 240(c)(4)(C) of the Act (stating that in the absence of an explicit adverse credibility finding, the applicant has a rebuttable presumption of credibility on appeal). The Immigration Judge also did not question the remainder of the respondent's evidence demonstrating continuous presence through the time of the merits hearing. The wage earnings statements, considered in totality with the respondent's other documentary evidence and his testimony that he has been in the United States since 1998, sufficiently establish his continuous residence in the United States since February 13, 2001 (Respondent's Br. at Exh. 2, 4, 7).

Second, the respondent is not inadmissible under section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E)(i) (IJ at 8-9). The Immigration Judge found that the respondent knowingly encouraged, induced, assisted, abetted, or aided another alien to enter the United States in violation of law based on the respondent's testimony that he and his ex-wife planned to have the respondent's son brought to the United States (IJ at 3; Tr. at 100-01). The respondent testified that he did not pay for the smuggler and did not know the details of the smuggling arrangement, but he knew that his ex-wife paid a smuggler to bring the respondent's son to this country (IJ at 9; Respondent's Br. at 7-8; Tr. at 103-04). Again, in the absence of an explicit adverse credibility finding, we accept the testimony as true.

The United States Court of Appeals for the Fifth Circuit, under whose jurisdiction this case arises, has stated that the inadmissibility analysis of section 212(a)(6)(E)(i) of the Act focuses on the actual conduct. *Soriano v. Gonzales*, 484 F.3d 318, 319-21 (5th Cir. 2007). Although the Fifth Circuit has ruled that an alien is inadmissible under section 212(a)(6)(E)(i) of the Act "even if he did not personally hire the smuggler and even if he is not present at the point of illegal entry," *id.* at 321, the cases in which the court upheld inadmissibility under the section involved some affirmative engagement in conduct that furthered the transport of an illegal alien within the United States after the illegal alien crossed the border. *Id.* ("The fact that Soriano shepherded the aliens within a few hours of their crossing evidenced a plan for the meeting and transportation."); *see also Murillo v. Lynch*, 618 F. App'x 217, 218 (5th Cir. 2015) ("Medina arranged to pick up the illegal aliens near the border soon after they had crossed illegally, which constituted substantial evidence of alien smuggling that rendered him inadmissible.") The respondent may have known that his ex-wife planned to hire a smuggler to bring the respondent's son into the United States but the respondent's acquiescence to the plan is not enough to trigger inadmissibility under section 212(a)(6)(E)(i) of the Act (Respondent's Br. at 8-9). *See, e.g.*, *Aguilar Gonzalez v. Mukasey*,

534 F.3d 1204, 1209 (9th Cir. 2008) ("Acquiescence is not an affirmative act" for purposes of section 212(a)(6)(E)(i) of the Act).

Finally, the Immigration Judge incorrectly held that the respondent was not eligible for TPS because he did not register or re-register during the most current registration period (IJ at 12; Respondent's Br. at 12; Tr. at 77-78). The respondent registered during the initial registration period when he filed his TPS application on May 8, 2001 (Tr. at 90, 95; Exh. 8). *See* 8 C.F.R. §§ 244.2(f)(1), 1244.2(f)(1). He was not, however, eligible or required to re-register during the most recent registration period because he was never granted TPS (Tr. at 118). *See* 8 C.F.R. §§ 244.17, 1244.17. Additionally, there is no requirement to register for an alien who is seeking de novo review of his eligibility for TPS. *See* 8 C.F.R. §§ 244.10(c)(2), (d)(1), 244.18(b), 1244.10(c)(2), (d)(1), 1244.18(b).

For these reasons we conclude that the Immigration Judge erred in holding that the respondent was not statutorily eligible for TPS at the time of his hearing. Nonetheless, we conclude that a remand is warranted for the Immigration Judge to determine in the first instance whether the respondent merits TPS as a matter of discretion. [2] Although the Immigration Judge's decision references several adverse factors (albeit in the context of whether to grant a waiver under section 244(c)(2)(A)(ii) of the Act), there is no discussion of positive equities that may weigh in the respondent's favor in a discretionary analysis (IJ at 8-9).

On remand the parties should have the opportunity to address whether the respondent should be granted TPS as a matter of discretion. The Immigration Judge should make the required findings of fact, and set forth the positive and adverse factors presented in the case to determine whether the respondent has met his burden to demonstrate that he merits TPS a matter of discretion. *See* section 240(c)(4) of the Act, 8 U.S.C. § 1229a(c)(4); 8 C.F.R. § 1240.8(d); *see also Matter of Almanza*, 24 I&N Dec. 771, 774-75 (BIA 2009), *remanded on other grounds by Almanza-Arenas v. Lynch*, 815 F.3d 469 (9th Cir. 2015) (en banc).

Accordingly, the following orders will be entered.

ORDER: The appeal of the Immigration Judge's determination that the respondent was not statutorily eligible for TPS is sustained.

FURTHER ORDER: The record is remanded for further proceedings consistent with this opinion and for the entry of a new decision.

FOR THE BOARD

[2] Moreover, we note that El Salvador's designation for TPS expired on March 8, 2018, such that it is not clear that the respondent who has never been granted TPS, is eligible to now apply. The Immigration Judge, on remand should address this issue.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
DALLAS, TEXAS

File: A094-436-078 April 19, 2017

In the Matter of

RODOLFO QUINTANILLA-ARANIVA	)	IN REMOVAL PROCEEDINGS
RESPONDENT	)	

CHARGE: 212(a)(6)(A)(i) - present without admission

APPLICATION: TPS

ON BEHALF OF RESPONDENT: Jonathan Earthman

ON BEHALF OF DHS: Mairiam Udinne

ORAL DECISION OF THE IMMIGRATION JUDGE

The lead respondent is a 43-year-old male native and citizen of El Salvador who entered the United States without inspection in March of 1998. A Notice to Appear was issued on July 31st, 2006, charging the respondent with removability under the above-cited section. During a master calendar proceeding, the respondent admitted the allegation and conceded the charge. Based on the admissions and concessions, removability was established by clear and convincing evidence. The respondent was given opportunities to seek relief. The respondent has requested

review of the denial of the TPS application, originally filed with the government as the sole form of relief.

List of Evidence

The respondent testified as the sole witness. The following documents have been marked and admitted. Exhibit Number 1 is the Notice to Appear. Exhibit Number 2 is the prima facie packet submitted on June 2nd, 2008. Exhibit 3 is a rejection notice to attempted filing of an application for TPS dated May 8, 2008. Exhibit Number 4, the respondent's exhibits submitted on August 28, 2009. 4A is the criminal history chart; 4B is the witness list. Exhibit Number 5 is the respondent's exhibits submitted November 23rd, 2009. Exhibit Number 6 is the respondent's motion to recalendar. Exhibit Number 7, the respondent's supplemental exhibits submitted on April 10th, 2017. Exhibit Number 8 is the application, the notice of intent to deny, and the decision. Exhibit Number 9 is a 765 from 2002, as well as a copy of the social security card and employment authorization card. Exhibit Number 10 is the denial of the 765 application from 2012.

Statement of the Facts.

The respondent is a 43-year-old male native and citizen of El Salvador who entered without inspection in March of 1998. There are two different dates for the date of entry on the Notice to Appear. The respondent indicated that he entered on March 3rd. However, on his application, he indicated that he entered on March 20th, but the year is the same. The initial period for TPS registration was on March 9th, 2001, for a period of 180 days. The respondent filed an initial application for that period on May 8th, 2001. The government sent a request for evidence to the respondent's attorney on October 24th, 2002. The respondent did not respond, and therefore, a denial was issued on April 17th, 2003. This is all contained in Exhibit Number 8. The

respondent was given a date in the denial notice to file a motion to reopen, and the deadline was May 20th. There initially was some confusion about whether a motion tor reopen was filed. However, the last page of Exhibit Number 8, which was originally though to be a motion to reopen, was actually pertaining to a different individual. Therefore, there is no evidence that the respondent filed a motion to reopen in this case. The respondent was married in Dallas on December 20th, 2001. Prior to 2001, the respondent lived in Virginia. The respondent's attorney had a Virginia address. The respondent said that his wife went to El Salvador in 2005, and visited her own relatives, and also visited the respondent's son who, at that time, was about 13 years old. The respondent said that his wife had seen his son on a couple of other occasions after that. The respondent's wife was not the biological mother of his son, although she was from El Salvador.

The respondent was arrested for prostitution in 2006. The respondent was convicted of that offense as a Class B misdemeanor, July 25th, 2006, and a Notice to Appear was issued on July 31st, 2006. The respondent testified that he was divorced sometime around 2009, and he said that, sometime around 2013, he was contacted by his son, who, by this time, was an adult, and his son informed him that he was having troubles with the mara in El Salvador. Therefore, the respondent contacted his ex-wife, and they agreed to bring the respondent's son to the United States. The respondent said that he could not travel because he did not have a TPS approval. He said his ex-wife could travel, because she had some kind of status, but it was never clarified on the record what kind of status she had. In any event, the respondent's wife made arrangements to have the respondent's son brought to the United States, whereupon the respondent's son began residing with the respondent in his home in Texas, and he continues residing with the respondent as of the date of today's hearing. The

respondent, through his own testimony, through the documents, and through his attorney, indicated that he did attempt on at least one, and possibly more than one occasion, to file an additional application during the re-registration periods. However, the respondent's attorney confirmed that the respondent did not file during the current registration period, and also did not file during each one of the re-registration periods. The respondent did proffer a new application to the court sometime in 2008, which is contained in Exhibit Number 2.

Credibility

The respondent's testimony, in and of itself, is not sufficient to carry his burden of proof in this case. The respondent had some improbable testimony. The respondent indicated that although he's worked for numerous employers in the United States from 2001-2017, and the respondent's social security card bears the designation "Not valid for employment," the respondent contended that at no time has he told any of his employers that he was authorized to work in the United States, nor did he sign any documents indicating that he had the right to work in the United States in connection with his employment. While that is conceivable that that is true, it is unlikely, given the requirements in the statute that the respondent would have had to have signed an I-9 form indicating that he was indeed work authorized in order to be employed, and, additionally, as the statute requires that the employer must examine a work authorization document for the respondent other than a social security card that has the designation "Not valid for employment." The respondent has had periods where he was work authorized. That was in 2001 and 2002, and also in 2016. Additionally, employers are only required to update the employment verification once every three years. So, it is possible that the respondent could have worked without being asked about work

authorization for a three-year period from 2001-2004, and from a two-year period from 2016-2017. However, that still leaves a significant gap where the respondent, if the statute were complied with, would have had to have (1) signed that he was work authorized, and (2) presented work authorization documents to his employer. Thus, while it is conceivable that he did not make a misstatement on an I-9 form, or mislead his employers, that appears to be improbable.

I'll also note that the respondent has demonstrated a strong motivation to remain in the United States, even at the cost of disobeying the immigration statutes of the United States. Thus, while I would not reject the respondent's testimony, I would not find that, in and of itself, it would be sufficient to carry the respondent's burden of proof.

Analysis

The temporary protected statute is contained in the Immigration and Nationality Act at Section 244. In order to qualify for temporary protected status, the statute requires that the applicant be a national of a foreign state which has been designated as a TPS state, that the alien has been continuously physically present in the United States since the effective date of the designation, that the alien has continuously resided in the United States since such date as the attorney general may designate, that the alien be admissible as an immigrant, except as otherwise provided in Paragraph 2A, which is an exception for inadmissibility under 212(a)(5) and 212(a)(7). The statute also requires that the respondent not be ineligible under Section 2B. That means conviction of a felony or two misdemeanors, or a persecutor, and additionally, the applicant is required to register during the registration period designated by the attorney general. Additionally, the statute provides, in Section 244(b)(5)(B), that an

alien shall not be prevented from asserting protection under this section in removal proceedings if the alien demonstrates that the alien is a national of a state designated under Paragraph 1. The respondent is a national of El Salvador, which is a state which has been designated.

_____The issues in this case would relate to the next three requirements; specifically, whether the respondent has continuous residence, whether the respondent is admissible, and whether the respondent registered during the designated period.

_____–Beginning with the first of those three issues, the issue of whether the respondent has had a continuous residence, the residence period is, by regulation, February 13th, 2001. The respondent must establish continuous residence since that date. The respondent's initial application, which is Exhibit Number 8, did not contain sufficient proof that the respondent met this requirement. The government issued a request for evidence on October 24th, 2002. The respondent did not respond to that, and the respondent has explained that the reason he did not respond was because in the interim, he had moved from Virginia to Texas, and had failed to notify the government, and, in addition to that, had failed to notify his own attorney. Therefore, the request for evidence was sent to the respondent's attorney in Virginia. The respondent's attorney presumably did not know how to contact the respondent in Texas. For whatever reason, neither the respondent nor the respondent's attorney responded to the request for evidence, which resulted in a denial based on abandonment on April 17th, 2003. Subsequently, the respondent has proffered evidence to show that he did have continuous residence from February of 2001 until May of 2001, the period referred to in the request for evidence. The evidence that the respondent offered is Exhibit Number 2, Tab E, F, and additionally, the respondent has also provided or offered evidence to show that he has continuous residence from 2003 to the present time,

2017. So, the crucial evidence in this case would be evidence that the respondent was residing in the United States prior to February of 2001. There's really only two documents which arguably go to that issue, and that's Exhibit 2, Tab E and Tab F. Tab F is not really very useful, because it's a tax return for 2002. It's not signed, and it's not dated. But more important than that, it's not during the relevant period. So, that just leaves Tab E. Tab E purports to be a W-2 form from the year of 2001. However, the first page, the W-2, is not really very helpful, because it doesn't specify the dates of employment. Page 3, and the rest of that exhibit, does have dates on it. That's earnings statements issued by a company in Virginia called Amliner East, Inc. [phonetic], in Vienna, Virginia, and it covers a period from January to February of 2001. Now, if this evidence had been submitted when it was requested -- that is, in 2002 -- then this may well have been sufficient to carry the respondent's burden of proof, as, at that point, it would have been recent in time, the government would have been able to verify the information, or to have requested that the respondent submit additional information if this were not sufficient. At that point, these earnings statements would have been only one year old. They are now 16 years old. The government would have been able to review the respondent's I-9 form with this company, and the employment application, but now, this evidence is stale, and it's not in a position to be verified. The respondent did not submit updated information concerning the period from January to February of 2001. That is the crucial period, because the statute and the regulations require continuous residence from February in 2001. So, the issue is whether respondent had established a residence by that time. The respondent has submitted about six weeks of earnings statements that would show that he did have a residence during that time. I don't think this is sufficient, however, at this point in time, because it's stale evidence which cannot be verified. The respondent could have, but did not, try to

verify this information with an updated letter from this company, if it still exists, or could have provided evidence that this company no longer exists, and thus, can no longer verify his employment. The respondent could also have provided other information, such as lease or housing information, medical information, purchases, letter from family and friends. The sole document which has been offered to me is a 16-year-old earnings statement, and I do not accept that as being sufficient to carry the burden of proof in this case, because it is stale, and because other information was potentially available which would have served that purpose. Therefore, the conclusion that I would reach would be that the respondent has not established continuous residence prior to the relevant date, which is February of 2001.

Now, moving on to the issue of whether the respondent is admissible to the United States, I find that he is not admissible to the United States. The respondent is inadmissible under Section 212(a)(6)(E)(i). Any alien who, at any time, knowingly has encouraged, induced, assisted, abetted, aided, any other alien to enter, or to try to enter, the United States, in violation of law, is inadmissible. There is an exception for family reunification. The exception does not apply, because the respondent does not come within the class of aliens that fits within the exception. There is also a waiver in Section 212(d)(11) of the Act. However, the respondent does not qualify for the waiver, because the waiver only applies to returning residents, or applicants for adjustment, or applicants who are immigrants. The respondent does not fall within any of those categories. There is another waiver, and that's contained in the TPS statute under Section 244(c)(2)(A). This provision states that the attorney general may waive any other provision of Section 212(a) in the case of an individual alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. And I would not grant this waiver to the respondent as a matter of discretion. The waiver

would not assure family unity, because the respondent's son has no legal status in the United States, and the respondent has identified no other family members that he has in the United States. It's not in the public interest, because the respondent has been residing in the United States unlawfully for an extended period of time, even when his application was denied, and the respondent has not brought to my attention any particular humanitarian needs that he has. The respondent, for example, has not demonstrated any unusual medical or educational concerns with respect to him or any family member. The respondent is in his 40s. He appears to be in good health. There's no indication to the contrary. The respondent's son, who's in his early 20s, has no status in the United States, is residing with the respondent, and the respondent has not brought to my attention that there are any particular humanitarian aspects of either his son's case or his own case. Therefore, I would decline to grant the respondent a humanitarian waiver. The respondent testified that his son originally came to him. The respondent then went to his ex-wife, and together, they decided that the respondent's son would be brought to the United States. Although the respondent denied that he provided financial assistance to the smuggler, he admitted that he had knowledge that his ex-wife provided financial payments to the smuggler who brought his son here. The respondent's son, upon arriving in the United States, has been residing with the respondent, and thus, it is apparent that the respondent, his son, and his ex-wife have jointly engaged in this enterprise to bring the respondent's son to the United States. Thus, the respondent is inadmissible as a person who has encouraged his son, an unlawful alien, to enter the United States, or abetted or assisted. For this reason, I find that the respondent is not eligible for TPS, because he is inadmissible.

Turning to the next issue, which is whether the respondent registered during the registration period, the respondent has made arguments here which I

consider to be conflicting in nature. The respondent is attempting to have his cake and eat it, too. The respondent has made the argument that, on the one hand, he is presenting me a continuing application, which was started in 2001, and has been continuously offered since that time. But on the other hand, the respondent has argued that because this is a de novo proceeding, that the application is the current application, and not the application that was filed with the government. These arguments are in conflict with each other, because it's either a continuing application, or it's not a continuing application. If it is a continuing application, then the respondent is bound by the government's requirement that he must produce supporting documentation in order to establish eligibility. On the other hand, if it is not a continuing application, then the respondent must show that he filed the application during a qualifying period. So, either way, the respondent has a problem. The respondent has pointed me to Board precedent which states that he does not have to file a copy of the original application with the court, and he is entitled to file a new application, and that is a correct statement, and that is precisely what the Board held. However, the same decision, which is Matter of Enriquez-Rivera, 25 I&N Dec. 575 (BIA 2011) also states that the judge has the privilege of requiring the government to produce the original application that the respondent submitted to the government, even if the respondent chooses to file, in the words of the Board, "An amended or updated application with the court." Now, the words "Amended or updated" indicate that this is not considered a new application, and I believe the respondent is correct, and it's a continuing application. The respondent has also made the argument that the Board has specified that a review before the immigration court is a de novo review, and that is also correct. That is what the Board has said. It's stated in a couple of different cases. It's stated in the Enriquez case. It's not stated, but it's implied in Matter of Lopez, 25 I&N Dec. 49 (BIA 2009) and

Matter of Barrientos, 24 I&N Dec. 100 (BIA 2007). However, that begs the question of what exactly is de novo. Is de novo the application, or is de novo the basis of the decision made by the government? There's nothing in these Board cases to suggest that the respondent can ignore a legitimate request for evidence, and then, years and years later, come in and ask for a second opportunity to present that evidence, when it could have been presented much earlier in time. If the respondent had presented his evidence, it is possible that his application would have been granted some 16 years ago, and he and this court, and everybody involved, would have been spared the necessity of reviewing all of this stale evidence. The government's decision to find the applicant abandoned was a correct decision, because the respondent did not meet his obligation to keep the government informed of his address. Additionally, the respondent acted unreasonably when he changed his address without informing his attorney that he was changing addresses. Now, the statute at 244(b)(5) states that the alien shall not be prevented from asserting protection in removal proceedings. The regulation, which implements the statute, under 8 C.F.R. §244.11, states that the alien may renew the application for temporary protected status in deportation or exclusion proceedings. It also states, in 244.18, that the alien shall have the right to a de novo determination of eligibility for temporary protected status. There's nothing in any of the Board decisions, which are precedent decisions, which would indicate that the respondent has the right, on the one hand, to refuse to provide evidence; on the other hand, to not re-file his application during the dates specified by the attorney general. The statute gives the respondent an opportunity to assert his claim that it does not exempt him from the filing deadlines. The regulation indicates that the respondent could renew the application filed before the government, but does not indicate that the procedural history of the case gets wiped out during that renewal. If the respondent's argument concerning de novo

review is correct, then it necessarily follows that the respondent has not filed an application within the relevant period. The statute requires that the application be filed during a registration period of not less than 180 days, and the regulation at 8 C.F.R. §244.17 talks about periodic registration, and the federal register for the current period of registration, which is at 81 Fed. Reg. 44645, states that the 60-day re-registration period runs from July 8, 2016 through September 6th, 2016. The respondent did not register during the current registration period. Without getting into the issue of whether the respondent is required to re-register during each and every registration period, I believe the statute contemplates that at the time the respondent asserts the defense in removal proceedings, he has to show that he has a registration in the current period. And here, the respondent has not shown that. The respondent did not apply during the current registration period. Although he did apply during the initial period, that period expired. Thus, the need to re-designate and extend the period. The respondent essentially makes the argument here that he can decline to follow the lawful request of the government to produce evidence, and then remain in the United States for almost an unlimited amount of time -- in this case, some 15 years -- without any lawful status, and then come into court and assert his defense, and have me believe that this is a timely defense. But the statute doesn't say that he is exempt from the registration deadlines. It is possible for the respondent -- or, some respondent, at least, some alien contemplated by Congress -- to assert a defense, and at the same time, offer a current registration. As a mathematical matter, that is entirely possible. But the respondent has not done that in this case. I do not believe that it was Congress's intent to allow aliens such as the respondent to decline a valid request from the government, remain in the United States unlawfully for 15 years, and then assert this defense without being required to register during the current registration period. Because, if this were

permissible, then it would mean that the finder of fact would be required to use stale evidence in making a determination. That would be impractical, and I do not believe this is what Congress intended when it enacted this statute. Therefore, either because the de novo review includes the procedural history of the case, or because the respondent is required to register during the current registration period, the respondent does not meet the statutory requirements. And for that additional reason, this application would be denied.

Based on each of these three independent reasons, the application would be denied, and therefore, as this is the sole relief sought by the respondent in this case, the following orders will be entered. Order. It is ordered that the application for TPS be denied. Further order. It is ordered that the respondent be removed from the United States to El Salvador on the charges contained in the Notice to Appear.

Please see the next page for electronic signature

R. WAYNE KIMBALL
Immigration Judge

//s//

Immigration Judge R. WAYNE KIMBALL

kimballr on July 24, 2017 at 10:52 PM GMT