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U.S. Citizenship
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Services

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JUN 17 2005

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FILE:

[REDACTED]
[EAC 02 113 52217]

Office: Vermont Service Center

Date:

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Cindy M. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and the case is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who was granted Temporary Protected Status on January 31, 2003. The director subsequently withdrew the applicant's Temporary Protected Status (TPS) after determining that at the time such status was granted, the applicant had been ineligible for TPS. The director based his conclusion on the following grounds: 1) the applicant is inadmissible under Section 212(a)(6)(C) of the Act; 2) the applicant failed to maintain her continuous residence in the United States since February 13, 2001; and, 3) the applicant failed to maintain her continuous physical presence in the United States since March 9, 2001.

On appeal, counsel asserts that the applicant's departures from the United States should not render her ineligible for TPS because she did not intend to abandon her residence here.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time if it is determined that the alien was not, in fact, eligible at the time such status was granted. 8 C.F.R. § 244.14(a)(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 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 Attorney General 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.

The phrase 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 phrase 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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Extensions of the TPS designation have been granted, with the latest extension valid until September 9, 2006, 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 Citizenship and Immigration Services (CIS). 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 to be addressed in this proceeding is whether the applicant was eligible for TPS at the time that such status was granted, as admissible under Section 212 of the Act.

The record reveals that the applicant was arrested in El Salvador for selling false United States Non-immigrant Visas to two individuals. On November 6, 2001, the applicant was found to be inadmissible under Section 212(a)(6)(C) of the Act because she had provided false documentation in assisting others to enter the United States illegally.

Pursuant to a Notice of Intent to Withdraw dated April 7, 2004, the applicant was granted an opportunity to file a Form I-601, Application for Waiver of Grounds of Excludability.

The record does not reveal that the applicant or counsel made any response to the Notice of Intent to Withdraw. Therefore, the director determined that the applicant, at the time she was granted TPS, was actually ineligible for TPS based on her inadmissibility under section 212 of the Act, and withdrew her Temporary Protected Status on February 17, 2005.

On appeal, counsel has not addressed or contested the director's finding of inadmissibility, nor has counsel submitted a Form I-601.

The applicant is ineligible for Temporary Protected Status because she is inadmissible under Section 212 of the Act. 8 C.F.R. § 244.2(d). Consequently, the director's decision to withdraw the applicant's Temporary Protected Status for this reason will be affirmed.

The next issues to be addressed in this proceeding are whether the applicant has established her qualifying continuous residence since February 13, 2001, and her continuous physical presence since March 9, 2001, in the United States.

The applicant stated on her Form I-821, Application for Temporary Protected Status, and on her Form I-765, Application for Employment Authorization, that her last entry into the United States was on February 10, 2000. However, CIS computer records reveal the following admissions into the United States (and corresponding departures from the United States) under a B-2, Non-immigrant Visa, since that date:

Admission: March 2, 2000	Departure: March 9, 2000
Admission: March 29, 2000	Departure: April 10, 2000
Admission: May 9, 2000	Departure: May 17, 2000
Admission: May 23, 2000	Departure: date unknown
Admission: July 18, 2000	Departure: July 24, 2000
Admission: August 17, 2000	Departure: date unknown
Admission: October 12, 2000	Departure: October 21, 2000
Admission: December 1, 2000	Departure: date unknown
Admission: March 14, 2001	Departure: March 30, 2001
Admission: May 6, 2001	Departure: May 14, 2001

Although these entries pre-date the eligibility dates for TPS, it is noted that CIS computer records also reveal the applicant's following admissions into the United States (and corresponding departures from the United States) under her B-2, Non-immigrant Visa:

Admission: August 12, 1999	Departure: August 23, 1999
Admission: September 23, 1999	Departure: October 14, 1999
Admission: October 21, 1999	Departure: November 2, 1999
Admission: November 9, 1999	Departure: November 16, 1999
Admission: November 23, 1999	Departure: December 10, 1999

On April 7, 2004, the applicant was notified of the director's intent to withdraw her Temporary Protected Status and was afforded the opportunity to submit evidence establishing her qualifying continuous residence and continuous physical presence in the United States.

As stated previously, the record does not reveal that the applicant or counsel made any response to the Notice of Intent to Withdraw. Therefore, the director determined that the applicant had failed to submit sufficient evidence to establish her qualifying continuous residence and continuous physical presence and withdrew the applicant's Temporary Protected Status on February 17, 2005.

On appeal, counsel asserts that the applicant's departures "are not absolute indication of her lack of intent to reside in the United States." Counsel states that the applicant "has all of her children in the United States and such a fact alone is conducive to establish her continuous presence."

Counsel asserts that the presence of the applicant's children in the United States attests to her own qualifying continuous physical presence in the United States. However, the applicant stated on her 2002 application for TPS, as well as on two subsequent applications for re-registration, that her seven children all lived in El Salvador. It is further noted that lead counsel ([REDACTED]) also signed all of these applications as the preparer. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Neither the applicant nor counsel has provided an explanation for this discrepancy.

Notwithstanding this argument of counsel's, the applicant's own absences from the United States are sufficient to preclude a favorable finding regarding her continuous residence and continuous physical presence in the United States.

Counsel asserts that the withdrawal does not comport with the "good cause" exception for withdrawal of TPS. The withdrawal under 8 C.F.R. § 244.14(a)(1), however, was based on the applicant's ineligibility due to her inadmissibility and her failure to establish qualifying continuous physical presence and continuous residence in the United States, and not for her failure to re-register for "good cause" under 8 C.F.R. §244.14(a)(3). Further, the applicant's departures cannot be viewed as occurring under the rubric of "brief, casual, and innocent" departures, as the facts of the case do not satisfy the regulatory definition of "brief, casual, and innocent."

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and

(3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

The applicant's documented absences from the United States (as reflected above in the record of admissions and departures) indicate that she resided in El Salvador for longer durations than her documented presence in the United States. For example, the applicant was outside of the United States from March 30, 2001 until May 6, 2001; a period of 36 days. In contrast, the applicant returned to the United States on May 6, 2001, and stayed for only 14 days before departing the country on May 14, 2001. The applicant's subsequent return to the United States is not documented. Therefore, it cannot be determined that the applicant's absences were "of short duration." Moreover, since the applicant has failed to state the purposes of her absences it is impossible to determine that they were "reasonably calculated to accomplish the purpose(s) for the absence[s]," as required under the first stipulations of the definition of "brief, casual, and innocent."

In addition, as detailed above, the record reveals that the applicant was arrested in El Salvador during one of her absences for selling false United States visas to two individuals. In light of this arrest, it cannot be determined that the purposes for the applicant's absences were "not contrary to law," as stipulated under the third requirement of the definition of "brief, casual, and innocent" departures.

The applicant's absences from the United States were not brief, or casual, or innocent. The applicant has not established her qualifying continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States. 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to withdraw the applicant's Temporary Protected Status for these reasons will also be affirmed.

Beyond the decision of the director, it appears that the applicant may also be inadmissible under section 212(a)(6)(E) of the Act, as an alien who knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law.

In addition, an alien shall not be eligible for Temporary Protected Status if the alien is described in section 208(b)(2)(A) of the Act. Section 244(c)(2)(B)(ii) of the Act. Section 208(b)(2)(A)(iii) states that an applicant is ineligible if there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside of the United States prior to the arrival of the alien in the United States. The applicant's arrest for selling false United States visas and her apparent involvement in alien smuggling may also be considered as serious nonpolitical crimes.

An alien applying for Temporary Protected Status 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.