



U.S. Citizenship  
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MAR 02 2007

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

[LIN 01 183 50041]

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 California Service Center. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal.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

The applicant is a native and citizen of El Salvador who was granted TPS on October 30, 2001. The director subsequently withdrew the applicant's status on March 22, 2006, when it was determined that the applicant had failed to submit final court dispositions for his felonious assault arrest on July 31, 2003 and his arrest for driving while intoxicated on February 29, 2004. The director also found the applicant had failed establish he had continuously resided in the United States since February 13, 2001 and had been continuously physically present in this country since March 9, 2001.

On appeal, the applicant makes no mention of and fails to submit final court dispositions for the two arrests cited by the director in his order. The applicant submits a copy of a memorandum in support of his custody redetermination hearing that was held before an Immigration Judge in Florence, Arizona, on January 13, 2004. The memorandum states (in pertinent part):

On or about October 11, 2003, Respondent Flores received notice that one of his sons had passed away. At that time, Respondent Flores returned to El Salvador. On or about December 24, 2003, Respondent Flores, once again, entered the U.S. without admission or inspection, at or near Douglas, Arizona. At that time he was apprehended by the Department of Homeland Security...

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General 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.
- (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 applicant's Federal Bureau of Investigation (FBI) fingerprint results report shows that on July 31, 2003, in Cleveland, Ohio, the applicant was arrested by the Cleveland Police Department for felonious assault. The FBI report also shows that on February 29, 2004, in Houston, Texas, the applicant was arrested by the Houston Police Department for driving while intoxicated and that he was convicted of that misdemeanor on May 21, 2004. The director requested court dispositions on September 27, 2005. However, the final court dispositions of these arrests are not included in the record of proceeding. Consequently, the director's decision to withdraw the applicant's approval for TPS is affirmed for this reason.

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.

The applicant states that he left the United States for emergent reasons and that he was apprehended upon his return to the United States on or about December 24, 2003. The record does not indicate that he requested or was given permission to leave the country and return by Citizenship and Immigration Services. However, his December entry into this country is confirmed by a Form I-213, Record of Deportable/Inadmissible Alien, dated December 22, 2003, that indicates that the applicant was apprehended on December 21, 2003, by the United States Border Patrol near Douglas, Arizona, shortly after he illegally entered the United States. At his interview, the applicant told the Border Patrol Agent that he left his home in Metalillo, El Salvador, on November 24, 2003.

After the grant of TPS, an alien must remain continuously present in the United States. Permission to travel may be granted pursuant to CIS advance parole provisions. However, failure to obtain advance parole prior to the alien's departure may result in the withdrawal of TPS and/or the institution or recalendering of deportation or exclusion proceedings against the alien. 8 C.F.R. § 244.15. The record does not show that the applicant attempted to obtain advance parole prior to his departure. Additionally, the applicant has submitted no evidence showing that he continuously resided or was continuously physically present in the United States during the period from July 31, 2003, when he was arrested in Cleveland for felonious assault, and December 21, 2003, when he was arrested by the Border Patrol. Therefore, he has not established continuous physical presence in the United States since he was granted TPS. The director's decision to withdraw the applicant's TPS pursuant to 8 C.F.R. § 244.14(a)(2) is affirmed for this additional reason.

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 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.