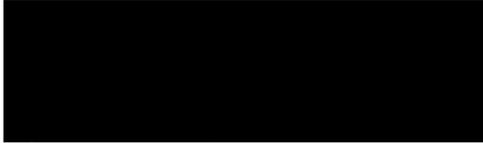


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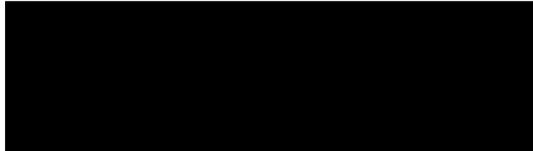
OFFICE: CALIFORNIA SERVICE CENTER

DATE: **MAR 05 2007**

[WAC 05 223 90025]
[WAC 01 289 53654]

IN RE:

Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

Self-represented

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office on appeal.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 Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on February 24, 2004, under Citizenship and Immigration Services (CIS) receipt number WAC 01 289 53654.

The Federal Bureau of Investigation fingerprint results report dated June 3, 2005, indicates that the applicant was arrested by the United States Border Patrol in Yuma, Arizona, and charged with: (1) alien inadmissibility under section 212; and (2) illegal entry into United States. Therefore, the applicant was requested on June 30, 2005, to submit the final court disposition of that arrest and of any other arrests. In response, the applicant submitted a copy of Form I-862, Notice to Appear, issued on May 27, 2004, a copy of Form I-200, Warrant for Arrest of Alien, issued on May 27, 2004, and a copy of Form I-286, Notice of Custody, also dated May 27, 2004, indicating that the applicant entered the United States near Andrade, California, on or about May 26, 2004. The director determined that these documents clearly indicated that the applicant entered the United States on May 26, 2004, and, therefore, the applicant had not maintained continuous physical presence in the United States since March 9, 2001. The director denied the initial application on September 30, 2005. Although the applicant was advised that he could appeal the director's decision by filing a completed Form I-290B, Notice of Appeal to the Administrative Appeals Office, within 30 days of the director's decision, the record does not contain evidence that the applicant filed a Form I-290B.

The director, in this case, should have withdrawn the applicant's TPS status rather than deny the initial application. However, the applicant filed the current Form I-821, Application for Temporary Protected Status, on May 11, 2005, and indicated that he was re-registering for TPS. On January 17, 2006, the director subsequently withdrew the applicant's TPS status after determining that the applicant was ineligible for TPS because USCIS records indicate that the applicant arrived in the United States on or about May 26, 2004.

Pursuant to section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a), the director may withdraw the status of an alien granted TPS at any time upon the occurrence of any of the following:

- (1) The alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status.
- (2) The alien has not remained continuously physically present in the United States from the date the alien was first granted Temporary Protected Status under this part. For the purpose of this provision, an alien granted Temporary Protected Status under this part shall be deemed not to have failed to maintain continuous physical presence in the United States if the alien departs the United States after first obtaining permission from the district director to travel pursuant to § 244.15.

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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until September 9, 2007, upon the applicant's re-registration during the requisite time period.

On appeal, the applicant explains that on May 26, 2004, he received a call from a "strange person" who told him that he has his daughter in the United States and to come, with money, to pick her up; otherwise, she would be turned over to the Immigration Services in Yuma, Arizona, or abandoned on the United States-Mexico border. The applicant asserts that he immediately went to the Immigration Detention Center in Yuma but no one could give him any information regarding his daughter; therefore, he decided to look for her along the border as he was afraid that she was indeed abandoned. He further asserts that while he was walking around the border, he came to the U.S.-Mexico point of entry where he inquired about his daughter and again he was told they had no information. The officer explained to him not to pass the border because he will not be able to come back to the United States; however, he was later arrested because they thought that he was coming from Mexico, and although he explained to the officers the situation, they did not believe him. The applicant states that when he was arrested, he "was inside of United States (in the Parking Lot) not outside as they stated," and that he showed them all his documents: California ID, Social Security Card, and Work Authorization Card under the TPS program. The applicant states that he still is insisting that it is true he was inside the United States, and that he was arrested because at that moment, a "lot of illegal people were crossing the border and confused me with them," and that he just went there to look for his daughter, not to do anything else. The applicant added that when he was arrested, he was finally told that his daughter had been arrested and was deported to Mexico.

The record of proceeding contains Form I-213, Record of Deportable/Inadmissible Alien, issued on May 26, 2004, indicating that United States Border Patrol Agents encountered a group of seven individuals, including the applicant, northwest of the Andrade Port of Entry, located approximately 75 yards north of the International Border. Six of the subjects stated that they were citizens of Mexico, and the applicant stated that he is a citizen of El Salvador and that he had a valid Employment Authorization Document (EAD). He presented to the officers a California Identification Card and stated that he had left his EAD at his home near San Francisco, California. The officer explained to the applicant that returning to Mexico and then entering the United States illegally would invalidate his EAD. The applicant stated that he had never gone into Mexico but that he was waiting near the border for his relatives to cross illegally, and that once he picked up his relatives, he was going to return to the San Francisco area with the relatives. The officer then showed the applicant his footprints coming from the direction of Mexico, but the applicant continued to insist that he had never entered Mexico, but that he was simply waiting in the brush near the border for his relatives to come across when six other individuals came from Mexico and sat down with him. The officer, therefore, examined the pattern on the bottom of the applicant's footprints and then followed this same imprint in the sand back to Mexico, where he verified that the applicant had indeed made an illegal entry. The record indicates that the area in which the officers found the applicant and the six other individuals is a staging area for smuggling in the Andrade, California area, it is an isolated area, and access to this area is not easily available to vehicles or the general public.

The statements made by the applicant on appeal are inconsistent with the statements made by the United States Border Patrol the day he was arrested on May 26, 2004. While the applicant stated that when he was arrested, he "was inside of United States (in the Parking Lot) not outside," the record indicates that the location where the applicant was encountered by the officers was "an isolated area, and access to the area was not easily

available to vehicles or the general public.” Additionally, the applicant stated that he showed all his documents to the officers: “California ID, Social Security Card, and Work Authorization Card under the TPS program.” However, the record indicates that when asked to see his EAD, the applicant stated that “he had left his EAD at his home near San Francisco.” While the applicant claimed that he was at the border because he was looking for his daughter whom he thought was abandoned at the border, the record indicates that when apprehended, he told the officers that he was “waiting near the border for his relatives to cross illegally.”

It is also noted that there is no evidence in the record, nor did the applicant submit evidence, to support his claim that he had made inquiries at the Immigration Detention Center in Yuma to obtain information regarding his daughter; that he had spoken to officers at the US-Mexico border and “told them the situation;” and that when he was arrested, he was told that his daughter had been arrested and was deported to Mexico. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

There is no evidence in the record that the applicant had obtained permission to travel to Mexico prior to his departure from the United States pursuant to 8 C.F.R. § 244.15. Therefore, the applicant has failed to maintain continuous physical presence in the United States. 8 C.F.R. § 244.14(a)(2).

The applicant has failed to establish that he has met the criteria for continuous physical presence in the United States as described in 8 C.F.R. § 244.2(b). Consequently, the director’s decision to withdraw the applicant’s Temporary Protected Status will be affirmed.

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.