



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: Vermont Service Center

Date: OCT 01 2007

[EAC 02 204 53483]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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

The applicant claims to be 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. § 1254.

The director withdrew the application because the applicant had departed the United States without parole during the required period.

The regulation at 8 C.F.R. § 244.14, Withdrawal of Temporary Protected Status, states:

- (a) Authority of the director. The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time upon the occurrence of any of the following:
 - (1) The alien was not in fact eligible at the time such was granted, or at any time thereafter becomes ineligible for such status;
 - (2) The alien has not remained continuously present in the United States from the date the alien was first granted TPS;
 - (3) The alien fails without good cause to register with the Attorney General annually within thirty days before the end of each 12-month period after the granting of TPS.

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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

On appeal counsel for the applicant asserts that the applicant has no idea why the Border Patrol Agents claimed he had left the United States, and that he is eligible for TPS.

The applicant was ordered to attend a telephonic hearing with an Immigration Judge while in removal proceedings. During that telephonic interview the applicant admitted to his absence, and the attorney indicated he had to research the implications of the absence on the applicant's TPS status. Sometime thereafter counsel for the applicant allowed the applicant to assert that he had no idea why Border Patrol Agents would make such a statement, when it was in fact the applicant who made the statements during sworn testimony.

The applicant admitted under oath during a telephonic hearing that he had left the United States on November 14, 2004, and returned to the United States on January 5, 2005, near Tucson, Arizona. On appeal the applicant recants the testimony he made under oath, and claims that he never left the United States. In addition, the record reveals that the applicant was detained on October 16, 2000, as an alien in possession of a fake I-551 and Social Security card. A copy of the passport submitted by the applicant shows that his passport was issued on December 12, 2000, in El Salvador, and yet the applicant claims to have been present in the United States since June of 1999. The AAO finds that the applicant's testimony lacks credibility. The applicant has submitted documentation that he received pay during the period he admitted to being out of the country, however, that evidence is not corroborated by any other evidence such as tax returns or a letter from his employer. These documents alone are not sufficient to rehabilitate the applicant's prior inconsistencies, in sworn testimony and on his form I-821. Therefore, the record does not contain sufficient credible evidence that the applicant has maintained a continuous physical presence in the United States during the required period.

By the applicant's own admission he traveled out of the United States on November 14, 2004. Without evidence corroborated the applicant's date of return to the United States, the AAO cannot determine that the applicant's absence was casual or innocent, and the director's decision will be affirmed.

After review of the record the AAO agrees with the director's decision and will affirm the withdrawal. 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.

ORDER: The appeal is dismissed.