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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

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U.S. Citizenship
and Immigration
Services



M₁

DATE: NOV 30 2011 Office: VERMONT SERVICE CENTER

FILE:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. The matter 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 applicant's TPS because he failed to establish he had continuously resided in the United States since February 13, 2001.

On appeal, counsel asserts that the applicant has maintained continuous physical presence and continuous residence in the United States. Counsel asserts, "[t]he applicant departed from the United States only once and due to an emergency and extenuating circumstances pursuant to INA 244(c)(4)." Counsel states the applicant was ordered removed in absentia on May 19, 2004, not June 25, 2004.

Counsel indicates at Part 2 on the appeal form that a brief and/or additional evidence would be submitted to the AAO within 30 days.¹ However, more than seven months later, no additional correspondence has been presented by counsel or the applicant.

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 Secretary 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

¹ Every appeal submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. 8 C.F.R. § 103.2(a)(1). The Form I-290B instructs the applicant to submit a brief and additional evidence to the AAO within 30 days of filing the appeal.

- (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 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.

The term *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. The designation of TPS for El Salvadorans has been extended several times, with the latest extension valid until March 9, 2012, 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 U.S. Citizenship and Immigration Services (USCIS). 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 AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record reflects that the applicant filed his TPS application on, May 2, 2001. On May 27, 2002, the applicant entered the United States without inspection and was apprehended by the U.S. Border Patrol near Eagle Pass, Texas. The applicant indicated that he departed El Salvador on May 10, 2002, entered Guatemala where he stayed for ten days, and then entered Mexico on May 23, 2002. The applicant indicated that he departed the United States due to an emergency in El Salvador.

On August 28, 2003, a Notice of Intent to Deny was issued, which informed the applicant of his apprehension on May 27, 2002. The applicant was advised that he had failed to establish that his absence was brief, casual and innocent or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside his control. The applicant was also advised that he had failed to establish evidence of his departure from the United States, as well as the length and nature of his absence.

The applicant, in response, asserted that in November 2001, he received word that his mother had suffered a stroke, and that he departed the United States to take care of her. The applicant provided:

- An affidavit with English translation from [REDACTED] a medical doctor, who indicated that in November 2001, the applicant's mother was diagnosed with cerebral emboli, that she was in a coma for fifteen days and for the next eight months, she went through intensive physical and speech therapy.
- A letter from [REDACTED] in Waldorf, Maryland, which attested to the applicant's employment since "05/20/02." The letter also indicated that this was the applicant's "current time working with [REDACTED] and has maintained employment with [REDACTED] as of 11/20/98 and has left from time to time to visit his Country and has always returned as planned."

On November 25, 2003, the director, in denying the application, determined that the applicant had provided conflicting dates of employment from [REDACTED] and he had failed to provide other documentation to support his employment. The director also determined that the applicant had failed to provide any evidence establishing his departure from the United States and the length of his absence. Based on the letter from [REDACTED] the director determined that the applicant had made several trips outside of the United States. The director concluded that the applicant had failed to establish continuous physical presence and continuous residence in the United States during the requisite periods. No appeal was filed from the denial of the application. On June 8, 2006, the application was inadvertently approved.

In the current decision issued on March 2, 2011, the director advised the applicant once again of his apprehension, his statements made on May 27, 2002, and the contents of the letter from [REDACTED]. The director noted that while the applicant had claimed his absence was a brief temporary trip abroad required by emergency or extenuating circumstances, the record reflects that he departed the United States on several occasions, none of which were authorized by USCIS. The director

concluded that the evidence of record did not establish that the applicant had established eligibility for TPS.

On appeal, the applicant has not provided any evidence to refute the director's findings. The applicant has not established that his absence from the United States was of short duration and reasonably calculated to accomplish the purpose for the absence. The applicant has not submitted credible evidence to dispute his employer's claim that he had visited his country on several occasions. Consequently, the director's decision to withdraw TPS will be affirmed.

Finally, the director noted in his decision that the applicant was ordered removed from the United States on June 25, 2004. The record, however, reflects that a removal hearing was held on May 19, 2004, and the applicant was ordered removed *in absentia*. The applicant subsequently filed a motion to reopen *in absentia* order, which was granted on June 17, 2011.

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. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.