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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



U.S. Citizenship
and Immigration
Services

M1

DATE: **FEB 06 2012** Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT: Self-represented

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 on appeal. The case will be remanded for further action.

The applicant is a citizen of Honduras who was granted 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 it was determined that he had failed to obtain advance parole prior to his departure from the United States and he, therefore, had not remained continuously physically present in the United States as required under 244(c)(3)(B) of the Act.

On appeal, the applicant asserts that he did not depart the United States at the time of his apprehension at or near Millet, Texas.

The director may withdraw the status of an alien granted TPS 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, or at any time thereafter becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1).

The regulation at 8 C.F.R. § 244.15 provides:

- (a) After the grant of Temporary Protected Status, the alien must remain continuously physically present in the United States under the provisions of 244(c)(3)(B) of the Act. The grant of Temporary Protected Status shall not constitute permission to travel abroad. Permission to travel may be granted by the director pursuant to the Service's advance parole provisions. There is no appeal from a denial of advance parole.
- (b) Failure to obtain advance parole prior to the alien's departure from the United States may result in the withdrawal of Temporary Protected Status and/or the institution or recalending of deportation or exclusion proceedings against the alien.

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 record contains a Form I-213, Record of Deportable/Inadmissible Alien, which indicates that on February 15, 2009, the applicant was apprehended near Millet, Texas. The Form I-213, indicates that the applicant claimed that he last entered the United States illegally by crossing at a place other than a designated port or entry without being inspected, admitted, or paroled by an immigration

officer. The Form I-213 indicates that the applicant was the driver of a vehicle containing four undocumented aliens and that he was arrested for alien smuggling.

A review of the record contains a Form I-215W, Record of Sworn Statement in Affidavit Form, from one of the undocumented aliens who was in the vehicle the applicant was driving at the time of the apprehension. When asked how he made arrangements with the applicant, the alien responded, “[b]ecause one of my friends called him to come and pick me up.” The applicant indicated that he did not know the applicant, but admitted that the applicant was aware of his illegal status in the United States. The alien admitted that after entering the United States he waited for the applicant at a hotel in Cotulla, Texas near the highway, and that the applicant picked him up in a red car.

Although the Form I-213 indicates that the applicant claimed to have last entered the United States without inspection, it did not list the entry date and the record does not contain a narrative affidavit form to establish said date. Based on the statements of the undocumented alien noted above, it appears that the applicant was not outside of the United States at the time of the apprehension on February 15, 2009; rather, he was in Texas waiting to transport the undocumented aliens.

As such, the director’s decision to withdraw the applicant’s TPS for failing to obtain advance parole will, itself, be withdrawn.

The issue regarding the applicant’s arrest for alien smuggling, however, does not appear to have been resolved. The applicant may be inadmissible under section 212(a)(6)(E) of the Act due to this violation. Therefore, the case will be remanded to the director for further adjudication. The director may request any evidence deemed necessary to assist with the determination of the applicant’s eligibility for TPS.

As always in these proceedings, the burden of proof remains solely on the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The case is remanded for further action consistent with the above and entry of a decision.