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



U.S. Citizenship
and Immigration
Services

DATE: **AUG 28 2013**

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:
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you.

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 is a native and citizen Honduras and Mexico 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 TPS because the applicant failed to establish that she had continuously resided in the United States since December 30, 1998, and had been continuously physically present in the United States since January 5, 1999.¹

On appeal, counsel asserts that the applicant was "granted administrative voluntary departure" by Customs and Border Patrol a day after her attempted re-entry into the United States. Counsel asserts, in pertinent part:

Although [the applicant] accepted voluntary departure at the port of entry, there is no indication that she was told about the institution of removal proceedings, accepted the terms of voluntary departure in lieu of proceedings, or was under a threat of initiation of removal proceedings in any way. There is no evidence in the record that [the applicant] knowingly and intelligently accepted administrative voluntary departure to avoid removal proceedings.

Counsel indicates that the applicant departed the United States on or about March 20, 2000 without obtaining advance parole.

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 applicant had not remained continuously physically present in the United States from the date she was first granted TPS. 8 C.F.R. § 244.14(a)(2).

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;

¹ The director, in his decision, inadvertently cited the provisions for Honduras and El Salvador for establishing continuous residence and continuous physical presence in the United States.

- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4.

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 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 applicant filed her initial TPS application on March 24, 1999, and it was approved on February 2, 2000.

Counsel's assertion that the director withdrew TPS because "on May 21, 2000, the applicant received voluntary departure at the San Ysidro port of entry after attempting to re-enter the United States without advance parole documents" is not supported by the record.

The record contains a Form I-213, Record of Deportable/Inadmissible Alien, which indicates that on May 20, 2000, at the San Ysidro, California port of entry, the applicant attempted to gain admission to the United States by presenting to the inspecting officer a Form I-551, Resident Alien Card, issued to another individual.² The applicant was referred to immigration secondary and was subsequently turned over to the Port Enforcement Team for further inspection where she admitted to her identity and nationality. A Form I-867A, Record of Sworn Statement in Proceedings under section 235(b)(1) of the Act, was executed in her native language and while under oath, the applicant admitted that she was a citizen and national of Mexico, born in Tecali, Pueblo, Mexico to Mexican parents; that she did not possess the proper documentation to enter, pass through or reside in the United States; that she purchased the Form I-551 in Tijuana (Mexico) for the sum of \$1000; that she knew it was illegal to gain admission into the United States under fraudulent means; and that she had no application pending before the legacy Immigration and Naturalization Service. The applicant indicated that she had no fear or concern about being returned to Mexico or being removed from the United States and that she understood that she was being removed from the United States for a period of five years.

² The applicant was assigned alien registration number [REDACTED] which has been consolidated into [REDACTED]

The applicant was found inadmissible to the United States, pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I)³ of the Act and processed for expedited removal. A Form I-860, Notice of Order of Expedited Removal, was issued and the applicant was expeditiously removed from the United States to Mexico under section 235(b)(1) of the Act⁴. The Form I-296, Notice to Alien Ordered Removed/Departure Verification, shows that the applicant was removed to Mexico, on foot, from the San Ysidro, California port of entry on May 21, 2000.

The AAO concludes that the applicant has not remained continuously physical present in the United States since the approval of her TPS application due to her expedited removal on May 21, 2000. Consequently, the director's decision to withdraw TPS will be affirmed.

Finally, due to the applicant's expedited removal, the AAO will not determine at this time whether her 61-day absence from the United States also interrupted her continuous physical presence in the United States pursuant to 8 C.F.R. § 244.14(a)(2).

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.

³ Section 212(a)(7)(A)(i)(I) of the Act shall not be applied in the determination of an alien's inadmissibility under section 244 of the Act. Section 244(c)(2)(A)(i) of the Act; 8 C.F.R. § 244.3(a).

⁴ Section 235(b)(1)(A)(i) provides - If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 212(a)(6)(C) or 212(a)(7), the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 208 or a fear of persecution.