



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JUN 03 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

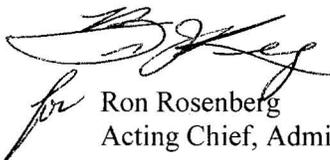
ON BEHALF OF APPLICANT:
[REDACTED]

INSTRUCTIONS:

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

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you.


for Ron Rosenberg
Acting 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 appeal will be dismissed.

The applicant is a native and 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 determined that the applicant failed to respond to a request for evidence to establish that he was given permission to leave the United States (granted advance parole). The director, therefore, withdrew the applicant's TPS.

On appeal, counsel asserts that the applicant departed the United States in January 2001 because his five year old son was sick and was hospitalized after having a severe asthma attack. Counsel states that the applicant remained in Mexico until his son's asthma was under control in May 2001. Counsel provides affidavits from the applicant, and the child's pediatrician and mother.

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).

After the grant of TPS, the alien must remain continuously physically present in the United States under the provisions of section 244(c)(3)(B) of the Act. The grant of TPS shall not constitute permission to travel abroad. Permission to travel may be granted by the director pursuant to the Service's advance parole provisions. 8 C.F.R. § 244.15(a).

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.

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 phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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 Forms I-213, Records of Deportable/Inadmissible Alien, indicating that at the San Ysidro, California Port of Entry on: (1) May 10, 2001, the applicant attempted admission into the United States by presenting a Mexican passport and U.S. visa belonging to another individual [REDACTED]. The applicant was referred to secondary inspection, where he was placed under oath and admitted to his true name and that he was a citizen of Mexico. The applicant was served with Form I-860, Notice and Order of Expedited Removal, and was expeditiously removed to Mexico on the same date;¹ and (2) May 12, 2001, the applicant attempted to gain entry into the United States by presenting Form I-551 (Resident Alien Card), belonging to another person [REDACTED]. The applicant was referred to secondary inspection where he was placed under oath, and in a sworn statement admitted to his true name and that he was a citizen of Mexico. The applicant was served with Form I-860 and was expeditiously removed to Mexico on the same date.

On March 2, 2012, the applicant was advised that based upon his departure, it appeared that he had failed to remain continuously present in the United States from the date he was granted TPS on June 12, 2000. The applicant was informed that USCIS records contained no evidence that a request for advance parole had been received. The applicant was instructed to submit evidence

¹ The applicant was assigned alien registration number [REDACTED] which has been consolidated into [REDACTED].

to show that he was granted advance parole to leave the United States. The applicant failed to respond to the notice. Therefore, the director withdrew the applicant's TPS on May 9, 2012.

In his statement, submitted on appeal, the applicant asserts that in December 2000, he received a telephone call from the mother of his son, who informed him that their son was hospitalized due to a severe asthma attack and he was in critical condition; that he felt he had to go to Mexico to help his son as the mother of his son could not handle the situation by herself; that he departed the United States in December 2000 and flew to Mexico where his son was hospitalized; that after one week his son was discharged from the hospital, but he was still not in good condition; that for four months he had to take his son to the hospital for treatment until the doctors were able to get his asthma under control; that in May 2001, his son's condition had stabilized and he returned to the United States; and that he did not apply for advance parole because "I was desperate and my mind was in complete turmoil worrying about my son, so I just left as soon as I could and didn't think about asking for permission for leave." The applicant states that he re-entered the United States on May 15, 2001.

The applicant states that he told the immigration officials that he was a Mexican citizen because he did not want to be sent to Honduras. This statement, however, is not persuasive as the applicant was a TPS registrant at the time of his apprehension.²

Counsel provides a letter with English translation from [REDACTED] of Chilpancingo, Guerrero, Mexico, who indicated that the applicant's son, [REDACTED], was admitted into the [REDACTED] in Chilpancingo from January 1-7, 2001 due to an asthmatic crisis, and that the clinic provided follow-up post release for several months from January 2001 to May 2001, until the son's asthma was under control.

First, the record contains no contemporaneous evidence that the [REDACTED] is the applicant's son and that his condition was so acute that it was necessary for the applicant to remain in Mexico during the subsequent months. Second, the applicant departed the United States for the express purpose to be with [REDACTED] who was hospitalized. The applicant's continued stay in Mexico subsequent to the child's release from the hospital would appear to be a matter of personal choice, not a situation that was forced upon him by unexpected events. However commendable the applicant's decision may have been to stay with the child, the applicant's prolonged absence from the United States was not of short duration and reasonably calculated to accomplish the purpose for the absence.

The applicant's four-month stay in Mexico interrupted his continuous physical presence in the United States. Therefore, the applicant has failed to maintain continuous physical presence in the United States since June 12, 2000, pursuant to 8 C.F.R. § 244.14(a)(2). Consequently, the director's decision to withdraw TPS will be affirmed.

² The applicant's EAD under category A12 was issued on November 30, 2000 and valid through July 5, 2001.

(b)(6)

Page 5

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.