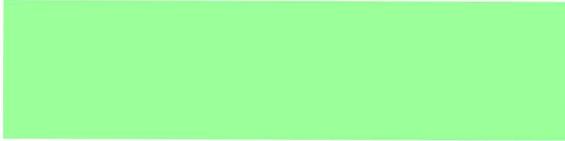




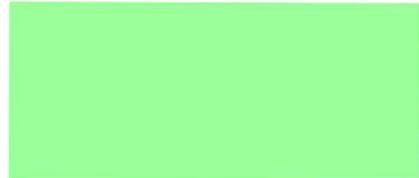
U.S. Citizenship  
and Immigration  
Services

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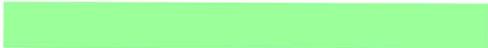


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JUN 26 2013

Office: VERMONT SERVICE CENTER

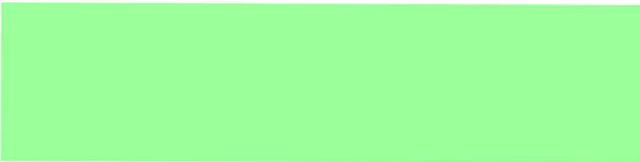


IN RE: Applicant:



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.

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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The applicant's TPS was withdrawn by the Director, Vermont Service Center, and is now before the AAO on appeal.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 denied the application because the applicant had not submitted any evidence to show that the inadmissibility charges against him had been resolved, nor did he file a Form I-601 waiver that the director had requested.

The director may withdraw the status of an alien granted Temporary Protected Status 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).

On appeal, counsel asserts that the applicant should not be required to submit a waiver request because he is not ineligible for TPS as he has never been charged with or convicted of a disqualifying crime.

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
  - (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, 2015, 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.

The applicant filed his initial TPS application on May 26, 2001.

On August 6, 2012, the director notified the applicant of the intent to withdraw approval of his TPS because USCIS records indicated that the applicant was apprehended by U.S. Customs and Border Patrol on August 1, 2010 in [REDACTED] California and charged with 1): Transporting Aliens and 2) Alien Smuggling (driver). The director instructed the applicant to file a Form I-601, Application for Waiver of Grounds of Inadmissibility, with correct fee, and granted the applicant 33 days to submit any evidence that would overcome the grounds for withdrawal. In response the applicant submitted a declaration, but he did not submit any documentation to show that the inadmissibility

charges against him were resolved, nor did he file the Form I-601. Therefore, the director withdrew the applicant's Temporary Protected Status.

On appeal, the applicant stated that he was the driver of the car on August 1, 2010 in which his friend who was an undocumented alien was a passenger; however, he asserts that his mere presence in the vehicle when it was detained is not conclusive evidence that he engaged in alien smuggling. The applicant claims that he cooperated with immigration officials and he was released after three days of detention. The applicant states that his "work permit" was returned to him and he was allowed to return to Los Angeles. The applicant states that since his detention, he has not appeared before an Immigration Judge or a Federal Judge in connection with his detention, and that he has never received any paperwork stating that he was being charged with a crime or that he had violated the laws of the United States.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The records of USCIS indicate that the applicant was arrested for smuggling of aliens, but prosecution was declined. While he asserts on appeal that he was allowed to "return to Los Angeles" USCIS records indicate that he was removed from the United States under sections 212 and 234 at that time. In addition, records reflect that the applicant was previously encountered on April 16, 2000, April 26, 2000, April 29, 2000, and May 3, 2000, and on several of those occasions he used a different name and claimed to be a citizen of Mexico. This calls into question the applicant's veracity, and raises questions as to his true nationality and identity. As such, the director's decision to withdraw the applicant's TPS is affirmed.

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.