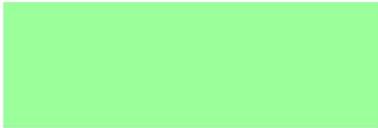




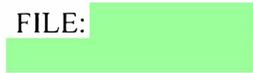
U.S. Citizenship
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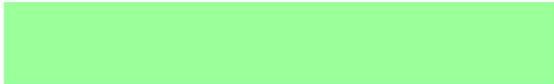
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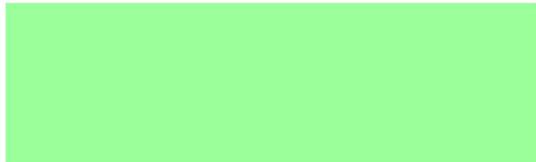
Office: VERMONT SERVICE CENTER

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 (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,

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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

The applicant is a citizen of El Salvador who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254. On March 6, 2014, the director withdrew TPS, finding that the applicant had not remained continuously physically present in the United States from the date he was first granted TPS as required by 8 C.F.R. § 244.14(a)(2). The director noted that the applicant testified under oath to departing the United States for four months before his employment authorization expired on September 9, 2013. The director further noted that although the applicant obtained advance parole, he testified to receiving the documentation after he had departed from the United States, and he was unable to use the travel documents to reenter on November 28, 2013 because they expired on September 9, 2013.

On appeal, counsel asserts that because most travel parole documents are valid for one year, the applicant thought that he was allowed up to a year to reenter the United States. Counsel asserts that the applicant was not aware that he was required to reenter the United States prior to September 9, 2013. Counsel asserts that pursuant to 8 C.F.R. § 244.14, the decision to withdraw TPS was issued in error as the applicant did not become ineligible at any time after his status was granted, he did not forgo his continuous physical presence, he did obtain advance travel parole, and he has demonstrated good cause in the exigent circumstances of removing his wife and child from El Salvador to escape harm from the gang [REDACTED]

The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if: (1) the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status; (2) the alien has not remained continuously physically present in the United States from the date the alien was first granted TPS; and (3) the alien fails without good cause to register with the Secretary within 30 days before the end of each 12-month period after the granting of TPS. Section 244.14 of the Act, 8 C.F.R. § 244.14(a).

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 advance parole provisions. 8 C.F.R. § 244.15.

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 from the United States, without regard to whether such absences were authorized by the Secretary. Section 244(c)(4)(A) of the Act.

The term *brief, casual, and innocent*, 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 a Record of Deportable/Inadmissible Alien, Form I-213, indicating that the United States Border Patrol encountered the applicant near [REDACTED] Texas on November 28, 2013. A Record of Sworn Statement, Form I-215B, dated November 29, 2013, shows that the applicant admitted that he entered the United States without inspection by crossing the river (Rio Grande) with a raft; that he knew that it was illegal to enter the United States in that manner; that he worked and resided in the state of North Carolina and had departed the United States four months before his employment authorization expired; that he departed the United States because his wife and son were being threatened by the local gangs in his hometown and he returned to El Salvador to smuggle them into the United States; that he received permission to leave the United States, but departed before the travel authorization arrived; that he received the travel authorization while he was in El Salvador; and that he was not able to reenter the United States with the travel authorization as it had already expired.

The applicant has also indicated that he had applied for travel authorization in November 2012, but departed the United States before he received the Form I-512 due to urgent humanitarian reasons. The applicant asserted that his wife and child were in danger and he “re-entered the U.S. with the Wife and Child without inspection.”¹ The applicant asserted that his departure was brief, casual, and innocent as his Form I-512 was valid until November 30, 2013. The documents submitted by the applicant include:

- A copy of a Notice of Action, Form I-797C, dated November 15, 2013, which advised the applicant of the receipt of his Form I-131.
- A printout from the USCIS My Case Status indicating that the applicant’s Form I-512 had been produced on November 30, 2012.
- An affidavit with English translation from a priest in El Salvador, who indicated that he was aware of the applicant’s and his family’s obligation to migrate to the United States due to the threats received from the gangs operating in El Salvador.
- An unsigned affidavit purportedly from the applicant and his spouse.
- A complaint form dated October 5, 2013 with English translation that was filed by the applicant while in El Salvador. The complaint indicates that on October 5,

¹ USCIS records indicate that the applicant’s spouse and child entered the United States without inspection on November 20, 2013.

2013, the applicant's and his family's lives were threatened by individuals known as

The director determined that the applicant had failed to submit sufficient evidence to establish that he had been granted advance parole through November 30, 2013. The director noted that USCIS records reflect that the applicant's advance parole was granted on November 28, 2012 and was valid through September 9, 2013. Contrary to counsel's assertion, the record reflects that the applicant was aware of the expiration date of his travel authorization. The applicant, in his sworn statement, admitted to receiving the Form I-151 while he was in El Salvador and that because it had expired he was unable to present it for reentry into the United States. USCIS records indicate that the applicant had requested and was approved advance parole on four occasions prior to 2012 and that two of the travel authorization approvals were for last than a year.

The issue of the applicant's advance parole notwithstanding, the applicant has failed to demonstrate that his absence was *brief, casual and innocent* in that he has not demonstrated that it was of short duration and reasonably calculated to accomplish the purpose, or that the purpose was not contrary to law. The applicant has not presented evidence that adequately explains why approximately 6 months was necessary to accomplish his stated purpose of bringing his wife and child to the United States, and we note that the stated purpose of smuggling his wife and child into the United States is not a lawful purpose.

Although the record establishes that the applicant was authorized advance parole, his absence outside the United States cannot be considered to be brief, casual and innocent. The applicant's extended absence was not of short duration and reasonably calculated to accomplish the purpose for the absence, which itself was contrary to law. 8 C.F.R. § 244.1. Therefore, the applicant has failed to maintain continuous physical presence in the United States. 8 C.F.R. § 244.14(a)(2). Consequently, the director's decision to withdraw the 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.