



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: JUL 13 2015

FILE: [REDACTED]
APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

[REDACTED]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", written over a light blue horizontal line.

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, withdrew the applicant's Temporary Protected Status. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

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. On November 29, 2013, the director withdrew TPS because it was determined that the applicant was found to be inadmissible to the United States under section 212(a)(6)(E)(i) of the Act.

On appeal, counsel asserts that the director relied upon faulty information and that the applicant is not guilty of alien smuggling, as he never crossed into Mexico to bring undocumented individuals into the United States. Counsel contends that the applicant admits only to transporting his brother and two other individuals upon their arrival in [REDACTED] Texas. Counsel provides an affidavit from the applicant detailing the events that led to his apprehension on February 27, 2012.

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).

8 U.S.C. § 1324(a)(1)(A) provides that any person who:

(i) knowing that a person is an alien, to bring to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

(ii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law.

Section 212(a)(6)(E) of the Act provides:

(i) In General

Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

(iii) Waiver Authorized

For provision authorizing waiver of clause (i), see subsection (d)(11).

U.S. Citizenship and Immigration Services may waive inadmissibility under the provisions of section 212(a) of the Act in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. Section 244(c)(2)(A)(ii) of the Act and the related 8 C.F.R. § 244.3(b).

According to USCIS records, on February 27, 2012, the applicant was driving a vehicle with three individuals when he was stopped by the U.S. Border Patrol near [REDACTED] Texas. The three individuals in the applicant's vehicle admitted they were illegally present in the United States. The applicant indicated that he drove from [REDACTED] Texas to [REDACTED] Texas to pick up his brother, an undocumented alien and that he did not expect to transport the other two individuals who entered his vehicle. The applicant further asserts that no money exchanged hands and no payments were expected for the transport. Prosecution of the applicant was declined for violating 8 U.S.C. § 1324, bringing in and harboring certain aliens.

In an affidavit, the applicant indicates that he received a telephone call from his brother informing him that he was in [REDACTED] Texas and needed his help. The applicant asserts that he traveled to [REDACTED] and found his brother along with two other illegal immigrants. The applicant contends that he agreed to give the two other illegal immigrants a ride as they had no money and in dire health, but that approximately 15 minutes after picking up his brother and the illegal immigrants, he was stopped by the U.S. Border Patrol. The applicant further contends that he had no prior knowledge of his brother coming to the United States and that he did not depart the United States and enter into Mexico to smuggle his brother into this country.

Section 212(a)(6)(E)(i) of the Act covers an individual "who participates in a scheme to aid other aliens in an illegal entry," even if the individual did not personally hire the smuggler or was not present at the point of illegal entry. *Soriano v. Gonzales*, 484 F.3d 318, 321 (5th Cir. 2007). In *Soriano*, the Fifth Circuit upheld the Board of Immigration Appeals finding that substantial evidence supported the determination that the alien was inadmissible for violating the alien smuggling statute by transporting aliens within the United States after their illegal entry. Accordingly, the sole act of transporting of an alien within the United States can be sufficient for a finding of inadmissibility under section 212(a)(6)(E)(i) of the Act. It is noted that in *Soriano*, the alien's testimony that he happened to meet three undocumented aliens at a fast food restaurant and agreed to give them a ride out of kindness was determined not credible by an immigration judge. *Id.*

However, the applicant asserts that he was not aware that his brother or any other undocumented aliens would be arriving in the United States on the day he provided transport. The applicant contends that he learned of his brother's presence in the United States only when his brother called him from Texas. Accordingly, the applicant asserts that he merely responded to his brother's call for assistance in providing transport for his brother and two other individuals. In *Parra-Rojas v. Attorney General* U.S. 747 F. 3d 164 (3d Cir. 2014), the Third Circuit held that

the petitioner was not inadmissible under section 212(a)(6)(E)(i) of the Act based on his conviction for bringing in and harboring aliens where there was no evidence that petitioner performed any act encouraging, facilitating, or otherwise relating to the aliens' entry into the United States. There was no indication that the petitioner knew or had contact with any of the aliens prior to transporting them, after they had already been dropped off inside the United States, and there was no indication that the petitioner provided any financial or other assistance to the aliens he transported prior to their entry into the country. The Third Circuit distinguished this case from cases where inadmissibility was found of individuals transporting aliens after their entries into the United States. In this case, the Third Circuit held that the petitioner had no personal involvement with the smuggled aliens prior to their entry that constituted assistance or inducement. *Id* at 170-171.

As the record is devoid of sufficient evidence that the applicant had been involved in a scheme or prearranged plan to transport his brother and the other illegal immigrants into United States, we find that the facts in the record are insufficient to find the applicant to be inadmissible to the United States under section 212(a)(6)(E)(i) of the Act.

Accordingly, the director's decision will be withdrawn and TPS will be reinstated.

ORDER: The appeal is sustained.