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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: JUL 2 4 2015

FILE:

APPLICATION RECEIPT #:

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 is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, withdrew the applicant's Temporary Protected Status. The matter is now before the Administrative Appeals Office on appeal. The matter will be remanded for further action consistent with this decision.

The applicant is a native and 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. § 1254a. On February 13, 2014, the acting director withdrew TPS because the applicant was found to be inadmissible as an alien smuggler under section 212(a)(6)(E)(i) of the Act.

On appeal, counsel disputes the director's decision that the applicant was an alien smuggler, asserting that the individuals smuggled themselves into the United States and the applicant did not affirmatively act in assisting these individuals. Counsel also asserts that there is no ground of inadmissibility for transporting aliens within the United States.

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).

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 as designated by the Attorney General, now the Secretary, Department of Homeland Security (Secretary), 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.

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

(i) 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).

Section 244(c)(2)(A)(ii) of the Act and the related 8 C.F.R. § 244.3(b) state:

> Except as provided in paragraph (c) of this section, USCIS may waive any other provision 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. If an alien is inadmissible on grounds which may be waived as set forth in this paragraph, he or she shall be advised of the procedures for applying for a waiver of grounds of inadmissibility.

According to the Form I-213, Record of Deportable/Inadmissible Alien, on March 18, 2012, Customs and Border Protection agents (CBP) observed two individuals crossing into the United States illegally from Canada and entering a waiting vehicle in Sumas, Washington. An investigative traffic stop was conducted and a CPB agent encountered the applicant in the driver's seat along with two other individuals in the vehicle. When questioned, the two individuals admitted to illegally crossing the United States-Canada border, stating that they made prior arrangements and paid to be smuggled into the United States. They also stated that they met the applicant at the prearranged location with the intention of being transported further into the United States.

In his declaration dated November 20, 2013, the applicant indicated that at the end of September 2011, he met a man at a grocery store in Washington. He stated that they became acquaintances, exchanged telephone numbers, and spoke several times. He stated that at the end of 2011, he received a telephone call from the man indicating that he was in Canada. The applicant further indicated, in pertinent part:

> In March 2012, he called and wanted to come back to the United States and asked me to do him a favor of picking him up near Sumas, Washington on March 18, 2012. He told me the date and where he wanted me to pick him up. He offered to give me some money to drive from Sumas, Washington to Seattle, Washington where he was going to live with friends. He was very insistent in the days leading up to March 18, 2012, and he was calling me about 10 times a day over a 4 days period. He told me please, please help him and that he did not have money but would give me a little bit of money some time later, I gave into his request and agreed to give him a ride from Sumas to Seattle.
>
> .....
>
> I got to Sumas and parked, I did not see them at first, and then they came up to my van. When I picked up the two guys, they were already inside of the United States. I did not know that there was another person with [the man] that was coming with him. I did not know the other person.

> I do not know how the [man] and his friend entered the United States, nor did I ask them. I do not know if someone smuggled them nor if they just crossed into the United States by themselves.

Counsel asserts that the applicant did not affirmatively act in the assistance or encouragement of undocumented aliens in crossing the border, as they crossed into the United States of their own free will, citing *Altamirano v. Gonzales*, 427 F. 3d 586 (9th Cir. 2004). In *Altamirano v. Gonzales*, the Ninth Circuit Court determined that, where there is no affirmative act of assistance, an individual's mere presence in a vehicle that is transporting an alien is insufficient to constitute alien smuggling under section 212(a)(6)(E) of the Act. *Id* at 595. However, unlike the respondent in *Altamirano*, the applicant spoke with the undocumented alien that he agreed to transport multiple times, prearranged a meeting time and was promised future payment.

Counsel contends that the applicant never departed the United States nor entered Canada to assist in the individuals crossing into the United States so that, as the individuals smuggled themselves across the border, transportation ceased when they crossed into the United States. Counsel relies on *Sanchez v. Holder*, 704 F. 3d 1107 (9th Cir. 2012), United States v. Lopez, 484 F.3d 1186 (9th Cir. 2007), and *Urzua Covarraubias v. Gonzalez*, 487 F. 3d 742 (9th Cir. 2007) to support this assertion. In *Sanchez v. Holder*, the petitioner was found to be inadmissible for alien smuggling based on her admission that she attempted to assist an alien in crossing into the United States. *Id* at 1110. Based on this admission, the Ninth Circuit did not address the issue of the transportation of illegal aliens beyond the border. In *United States v. Lopez*, the Ninth Circuit stated that alien smuggling, in the criminal context, continues until the initial transporter who brings aliens to the United States ceases transportation. *Lopez* at 1191. It is acknowledged in *Urzua Covarraubias v. Gonzales*, 487 F.3d 742, 747 (9th Cir. 2007), the Ninth Circuit extended this reasoning to alien smuggling under section 212(a)(6)(E) of the Act.

However, an alien who knowingly participated in a prearranged plan to transport undocumented aliens away from the border after their unlawful entry has been found to fall within the purview of section 212(a)(6)(E) of the Act. *See Hernandez-Guadarrama v. Ashcroft*, 394 F.3d 674, 679 (9th Cir. 2005). In *Hernandez-Guadarrama*, the court further determined that an individual may knowingly encourage, induce, assist, abet or aid with illegal entry even if he is not present at the point of illegal entry. *Id.* The Ninth Circuit also cited to a Seventh Circuit case, *Sanchez-Marquez v. INS*, 725 F. 2d 61 (7th Cir. 1984) (petitioner's statement to Mexican aliens that he would take them to Chicago if they met him on the American side of the border leads to a reasonable inference that he knew they entered the country illegally) to indicate its accord with the alien smuggling decisions of other circuit courts. *Id.*

The applicant, similar to the petitioner in *Sanchez-Marquez*, spoke with an undocumented individual who wanted to come to the United States and pre-arranged a meeting in Sumas, Washington, on the American side of the border. Prior to that individual's border crossing, the applicant agreed to transport him from Sumas to Seattle, with the applicant to be paid at a later date. Based on these facts, we concur with the acting director's finding that the applicant is

inadmissible under section 212(a)(6)(E) of the Act for alien smuggling. As noted above, inadmissibility under section 212(a)(6)(E)(i) of the Act may be waived. 8 C.F.R. 244.3(b).

The record, in this case, does not indicate that the applicant was advised to file Form I-601, Application for Waiver of Grounds of Inadmissibility. Therefore, the case will be remanded so that the director may accord the applicant the opportunity to submit a Form I-601. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS. An adverse decision on the waiver application may be appealed to the AAO.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.