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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: MAY 1 2 2015 Office: VERMONT SERVICE CENTER FILE:
I-290B:

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,

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 (AAO) 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 February 7, 2014, the director withdrew TPS because the applicant had: 1) not remained continuously physically present in the United States from the date she was granted TPS as required by 8 C.F.R. § 244.14(a)(2), and 2) failed to submit the required annual re-registration application for each period subsequent to the approval of her initial application.

On appeal, counsel argues that the director erroneously concluded that the applicant's absence from the United States was not brief, casual, and innocent in nature and that she failed to show good cause in failing to re-register for TPS. Citing *Rosenberg v. Fleuti,* 374 U.S. 449 (1963), counsel asserts that the applicant is eligible for TPS regardless of the length of her stay outside the United States. Citing to several court decisions, counsel states that the *Fleuti* doctrine now extends to other groups including those seeking legalization and suspension of deportation. Counsel states that there is good cause for the lack of re-registering during the period in question, and that the applicant had submitted a re-registration application for TPS in 2013 in light of the fact her TPS status was reinstated on May 31, 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).

Section 244(c)(3)(B) of the Act, and the related regulation in 8 C.F.R. § 244.14(a)(2) provide that the applicant's TPS may be withdrawn if the alien has not remained continuously physically present in the United States from the date the alien first was granted TPS, and if the alien fails, without good cause, to register annually, at the end of each 12-month period after the granting of such status, in a form and manner specified by the Secretary, Department of Homeland Security (Secretary).

The regulation at 8 C.F.R. § 244.15 provides:

> (a) After the grant of Temporary Protected Status, the alien must remain continuously physically present in the United States under the provisions of 244(c)(3)(B) of the Act. The grant of Temporary Protected Status shall not constitute permission to travel abroad. Permission to travel may be granted by the director pursuant to the Service's advance parole provisions. There is no appeal from a denial of advance parole.
>
> (b) Failure to obtain advance parole prior to the alien's departure from the United States may result in the withdrawal of Temporary Protected Status and/or the

institution or recalendering of deportation or exclusion proceedings against the alien.

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. 8 C.F.R. § 244.1(3).

The term 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 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 AAO conducts appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The first issue to be addressed is the applicant's absence from the United States subsequent to the August 2, 2002 approval of her TPS application, and her failure to obtain permission to travel abroad pursuant to the USICS's advance parole provisions as provided in 8 C.F.R. § 244.15.

The record indicates that the applicant filed a Form I-131, Application for Travel Document, on January 24, 2002. The applicant indicated that she wished to travel to El Salvador to visit her ailing mother. On February 1, 2002, the District Director, Washington, D.C., issued a notice denying the applicant's request for advance parole.

The record contains a Form I-213, Record of Deportable/Inadmissible Alien, which indicates that the applicant entered the United States without inspection on May 30, 2003, and was subsequently

apprehended by the U.S. Border Patrol. On July 16, 2003, removal proceedings were held and the applicant was ordered removed from the United States. The applicant appealed the decision of the immigration judge to the Board of Immigration Appeals (BIA). On that appeal form, the applicant admitted that she knew it was against the law to leave the United States without permission.

On her Form I-765, Application for Employment Authorization, ( ) filed March 12, 2012, the applicant indicated that her last entry into the United States was around June 2003.

Based on her June 2003 entry, on September 13, 2013, the applicant was requested to submit evidence of an approved Form I-131, Application for Travel Document, a Form I-512, Authorization for Parole of an Alien into the United States, or evidence that she had been lawfully admitted to the United States. The applicant was also requested to provide a sworn statement explaining the circumstances surrounding her departure from the United States. In response, the applicant indicated, in pertinent part:

> In the year of 2002, as my mother was diagnosed with terminal Cancer, I through a Law Office requested for Advance Parole to travel to El Salvador to visit my dying mother, but my request was denied. As my mother was on the death bed, I travelled to El Salvador on December 16, 2002, without any permission and reentered United States on May 30, 2003, without inspection.

As evidence, the applicant submitted a copy of her mother's death certificate indicating that her mother passed away on March 7, 2003.

On appeal from the decision withdrawing TPS, the applicant indicates, in pertinent part:

> Knowing that my mother, who was taking care of my minor daughter [name omitted] was on her death bed, I traveled to El Salvador on December 16, 2002. My mother died on March 7, 2003. I remained in El Salvador until May 2003 so that I could make arrangements for my sister to care for my daughter upon my return to the United States. I hope to take my daughter backed to the U.S. with me, but I did not have sufficient funds at that time because all our money had gone into providing care and treatment for my mother. As soon as I was able, I returned to the United States on May 30, 2003, where I was apprehended by Border Patrol and placed in detention.

Citing 8 U.S.C. § 1255(a)(a)(3)(B) and several court decisions, counsel asserts that the courts repeatedly find trips of the nature taken by the applicant and its duration to be, in accordance with the *Fleuti* doctrine, brief, casual and innocent and therefore within the scope of Congress' intent in creating this allowance to the continuous physical presence requirement. *See Rosenberg v. Fleuti*, 374 U.S. 449 (1963).

It is noted that the Fourth Circuit Court of Appeals, in *Othi v. Holder*, 734 F.3d 250 (4th Cir. 2013), in deciding whether a lawful permanent resident sought admission to the United States after a trip abroad, held that the *Fleuti* doctrine did not survive the enactment of IIRIRA. For the purposes of Temporary Protected Status, the definition of continuous physical presence is addressed in section 244(c)(4) of the Act and 8 C.F.R. § 244.1 and incorporates the brief, casual and innocent language used by the Court in *Fleuti.*

In *Fleuti*, the court held that a lawful permanent resident (LPR) who crossed into Mexico for a few hours was deemed to be an "innocent, casual and brief excursion" and was not "meaningfully interruptive" of the individual's status. However, the court recognized that when a LPR leaves the United States for a reason that is inconsistent with the policies reflected in this country's immigration laws, the "interruption of residence thereby occurring would properly be regarded as meaningful." *Id.* at 462.

Absences that are contrary to law have been found to interrupt an individual's continuous physical presence. Individuals interrupt their permanent residence or presence in the United States when, during a visit abroad, decide to engage in an unlawful act, thereby losing the innocent purpose of the trip. *See Cuevas-Cuevas v. INS,* 523 F.2d 883, 884 (9th Cir. 1975); *See also Longoria-Castenada v. INS*, 548 F.2d 233, 237 (8th Cir. 1977), (holding that a LPR's intent to engage in alien smuggling at the time of his departure from the United States converted his otherwise "short, casual sojurn" into a meaningful disruption of his residence); *Lopez de Jesus v. INS*, 312 F. 3d 155, 161 (5th Cir. 2002) (upheld the finding that a permanent resident who spent only three days in Mexico had meaningfully interrupted his residence when the purpose of the trip was to aid an individual to unlawfully enter the United States; *Selimi v. INS*, 312 F. 3d 854, 860 (7th Cir. 2002) (holding that a LPR's trip outside the United States was no longer innocent, when his intent involved smuggling his wife and family members). A lawful permanent resident alien's brief departure to Mexico, with the intention of assisting aliens in entering the United States unlawfully, constitutes a meaningful interruption of his residence. *Matter of Valdovinos* 14 I&N Dec. 438, 440 (BIA 1973).

The applicant's absence from the United States from December 16, 2002 to March 7, 2003 may initially have been innocent. However, the innocent purpose was lost when the applicant decided to engage in an unlawful act. The applicant's actions subsequent to the death of mother were contrary to law as she sought to illegally bring her daughter into the United States. As such, it cannot be concluded that the applicant's absence from March 8, 2003 to May 29, 2003, following the death of her mother, was innocent and not contrary to law within the meaning of 8 C.F.R. § 244.1. As the applicant's absence during this time period has been determined to not be innocent, we will not address whether this same time period was also brief, as required by the regulations. *Id.* The applicant has disrupted the period of continuous physical presence in the United States due to that absence from the United States. Consequently, the director's decision to withdraw TPS on this ground will be affirmed.

The second issue to be addressed is the applicant's failure to re-register during the required periods.

TPS may be withdrawn if the alien fails, without good cause, to register with DHS annually within thirty (30) days before the end of each 12-month period after the granting of such status. Section 244(c)(3)(C) of the Act and 8 C.F.R.§ 244.14(a)(3).

The applicant must continue to maintain the conditions of eligibility as the regulation at 8 C.F.R. § 244.17(a) provides, in pertinent part:

> Aliens granted [TPS] must re-register periodically in accordance with USCIS [U.S. Citizenship and Immigration Services] instructions. Such registration applies to nationals of those foreign states designated or redesignated for more than one year by DHS [Department of Homeland Security]. Applicants for periodic re-registration must apply during the registration period provided by USCIS.... By completing the application, applicants attest to their continuing eligibility.

If an alien fails to register without good cause, USCIS will withdraw TPS. USCIS may, for good cause, accept and approve an untimely registration request. 8 C.F.R. § 244.17(b).

The record reflects that the applicant filed her initial TPS application on March 22, 2001, and it was approved on August 2, 2002. The applicant first submitted a TPS re-registration application with Form I-765 on September 18, 2002. The Form I-765 (category A-12) was approved and employment authorization was valid through September 9, 2003. There is no evidence in USCIS electronic databases indicating that subsequent re-registration applications were filed during each of the re-registration periods until March 12, 2012.

On September 13, 2013, the applicant was advised that without evidence of timely re-registrations or good cause for failing to re-register during the previous re-registration periods, the current Form I-765 would not be approved.

The applicant, in response, asserted, in pertinent part:

> I re-registered for TPS in 2002. In 2003, I consulted with an attorney [name omitted], who helped me try to appeal my removal order. At that time, I also provided my attorney with the funds necessary for a TPS re-registration. My attorney advised me that this could take up to three years to approve. At that time, I also consulted three attorneys. All of them gave me the same advice: I was ineligible for TPS and I should simply try to avoid arrest and deportation.

The applicant asserted that in 2004 she had telephoned her former attorney regarding her application for re-registration and was informed that "there was nothing more they could do." The applicant asserted that because she did not understand how to reapply for TPS and could not find an attorney willing to assist her, "I was not able to reapply for TPS for many years."

USCIS records reflect that the re-registration application filed on March 12, 2012 was approved on May 31, 2012. That application was approved in error as there is no evidence that the applicant had

filed the required re-registration applications subsequent to 2002 or provided a good cause for failing to re-register during the previous re-registration periods. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of a prior approval that was erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988).

On appeal, counsel asserts that the applicant was not able to navigate the complex U.S. immigration system on her own without the assistance of an attorney, and that the applicant should not be penalized for the bad advice of counsel, especially when she made proactive efforts to seek out multiple attorneys, all of whom gave her the same advice. Inasmuch as the applicant is not currently pursuing an ineffective assistance of counsel claim and has not attempted to comply with the threshold requirements of such a claim, we need not consider this matter. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988) (requiring an appellant to meet certain criteria when filing an appeal based on ineffective assistance of counsel).

The statements of counsel and the applicant have been considered. However, it is determined the statements are not sufficient to establish a finding of failure to register for good cause as stipulated in 8 C.F.R. § 244.17(b). There is no provision to waive the re-registration requirement based on the assertion that the applicant lacked knowledge of the immigration laws. Further, no evidence other than the applicant's statements has been provided to support the claims that the applicant's former attorney provided inaccurate legal advice. Consequently, the director's decision to withdraw TPS status for failure to re-register for TPS during the re-registration requisite periods will be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.