



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: MAY 19 2015

FILE #: [REDACTED]

APPLICATION #: [REDACTED]

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

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".

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 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 June 24, 2003. On May 19, 2014, the Director withdrew the applicant's TPS after determining that the applicant had failed to obtain advance travel authorization before departing the United States. Additionally, the applicant's re-registration application was denied.<sup>1</sup>

On appeal, the applicant states that he received misinformation from a named law office regarding his ability to travel outside the United States. The applicant states that the law office told him that his advance parole document indicated that he had until May 1, 2014 to travel. The applicant further states that he chose to travel because his mother was very sick and it was a life or death situation. He submitted a notarized letter from his mother's caregiver and a receipt indicating the dates of his intended travel to El Salvador in support of his statement.

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

The Director may withdraw TPS granted under section 244 of the Act at any time if it is determined that the individual 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Section 244(c)(3) of the Act provides that the applicant's TPS shall be withdrawn if the alien has not remained continuously physically present in the United States from the date the alien first was granted TPS, without prior consent of the Secretary, 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).

Further, the regulations at 8 C.F.R. § 244.14(a)(2)-(3) instruct that USCIS may withdraw TPS status upon the occurrence of the following:

...(2) The alien has not remained continuously physically present in the United States from the date the alien was first granted Temporary Protected Status under this part. For the purpose of this provision, an alien granted Temporary Protected Status under this part shall be deemed not to have failed to maintain continuous physical presence in the United States if the alien departs the United States after first obtaining permission from USCIS to travel pursuant to § 244.15;

<sup>1</sup> The Director issued a second decision withdrawing the applicant's TPS on June 11, 2014, acknowledging that the applicant had responded to an April 7, 2014 Notice of Intent to Withdraw, and concluding that the response did not establish continuing eligibility for TPS. The Director stated that the withdrawal of TPS was as a result of the applicant's failure to establish continuous physical presence in the United States, or permission to travel prior to the named absence.

(3) 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 Temporary Protected Status.

8 C.F.R. § 244.1 provides that:

Brief, casual, and innocent absence 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.

...

Continuously physically present 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.

Continuously resided 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.

...

In accordance with 8 C.F.R. §244.1, failure to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absence is not a basis to withdraw TPS. The burden of proof is on the applicant to illustrate the nature of their absence and their continuing eligibility for TPS. 8 C.F.R. §244.9. 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 weighed 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).

In this case, the Director issued a notice of intent to withdraw the applicant's TPS on April 7, 2014. The Director identified that the applicant had been apprehended by U.S. Customs and Border Patrol on March 4, 2014 after having entered the United States without inspection. The Director requested that the applicant submit proof of an approved Form I-131 or a copy of a Form I-512, or in the alternative, "a statement explaining the circumstances surrounding your departure from the United States" and "documents to establish the purpose and duration of your absence from the United States." In response, the applicant submitted documentation of his previously issued, but expired, travel document. The Director did not find that to be sufficient evidence.

On appeal, the applicant provided documentation of his previously issued travel document, a receipt showing his intended itinerary for travel to El Salvador, as well as a notarized letter from his mother's caregiver concerning her condition. The applicant also submitted a letter from his U.S. citizen niece stating that the applicant left the United States in good faith, believing that his travel document remained valid.

Although the applicant's travel document was only valid for travel prior to September 9, 2013, the evidence taken in its entirety indicates that the applicant's failure to maintain continuous physical presence in the United States was by virtue of a brief, casual, and innocent absence. The applicant states that he departed the United States on December 22, 2013 and the record indicates that he was apprehended upon his return on March 4, 2014. The applicant indicates that he relied on an incorrect reading of his prior travel document when choosing to depart the United States in December 2013. A valid travel document is not required in order to show that an absence qualifies as brief, casual and innocent. 8 C.F.R. § 244.1. The applicant also states that he departed the United States because his mother was very sick and it was a life or death situation. The applicant further reported that he was not allowed to board a flight to return to the United States with the expired advance parole document, and as such returned to the United States without inspection. The record, including the receipt for the applicant's intended airline travel and a notarized letter from the applicant's mother's caregiver concerning her condition, confirms the applicant's assertions.

Here, the applicant has provided sufficient documentary evidence to meet the applicant's burden of proof of continuous residence in the United States during the requisite period. The evidence indicates that the applicant's absence was brief, casual and innocent. 8 C.F.R. § 244.1.

It is the applicant's burden to establish eligibility for the immigration benefit sought. 8 C.F.R. §244.9. Here, the applicant met that burden.

**ORDER:** The appeal is sustained.