



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF W-I-R-

DATE: SEPT. 10, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

APPLICATION: FORM I-821, APPLICATION FOR TEMPORARY PROTECTED STATUS

The Applicant, a native and citizen of El Salvador, was granted temporary protected status. *See* Immigration and Nationality Act (the Act) § 244, 8 U.S.C. § 1254(a). The Director, Vermont Service Center, withdrew the Applicant's Temporary Protected Status (TPS). The matter is now before us on appeal. The appeal will be dismissed.

On December 29, 2014, the Director withdrew the Applicant's TPS because he did not obtain advance parole prior to his departure from the United States, so that he was not continuously physically present in the United States from the date he was granted TPS, as required by 8 C.F.R. § 244.14(a)(2).

The director may withdraw the status of an applicant granted TPS under section 244 of the Act at any time if it is determined that the Applicant 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).

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 *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

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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. 8 C.F.R. § 244.9(b). To meet this burden of proof the applicant must provide supporting documentary evidence of eligibility apart from the applicant's own statements. *Id.*

The record reflects that on September 6, 2014, the Applicant was encountered by a border patrol agent near [REDACTED] Texas, who determined that the Applicant had unlawfully entered the United States. The Applicant indicated that he departed the United States from New Jersey on April 19, 2014 to visit his mother in El Salvador. The Applicant stated that he was outside of the United States for five or six months and had not requested advance parole prior to leaving the United States.

On September 12, 2014, a notice of intent to withdraw TPS was issued, which requested that the Applicant submit evidence that he had been granted permission to depart the United States on April 19, 2014, or in the alternative, a statement explaining the circumstances surrounding his departure from the United States, and documents to establish the purpose and duration of his absence from the United States. The Applicant was advised that his previous Form I-131, Application for Travel Document, filed in February 2013 was only valid through September 13, 2013, and that his Form I-131 filed on August 13, 2014, appeared to be pending.

In response, the Applicant asserted that he traveled to El Salvador with advance parole on two previous occasions to visit his ailing elderly mother. The Applicant asserted that on April 19, 2014, he was under the mistaken impression that his advance parole was still valid, as the Form I-512L, Authorization for Parole of an Alien into the United States, and his passport had a date stamp of May 14, 2014. The Applicant asserted that he had intended to return to the United States on May 10, 2014; however, because his advance parole had expired, he was not permitted entry on the plane. The Applicant stated that on May 14, 2014, he visited the U.S. Embassy in El Salvador and was informed that he should apply for a new advance parole. The Applicant stated that he applied for advance parole and was waiting for its approval, but that on August 23, 2014, he received a death threat from a gang demanding money within 48 hours. The Applicant asserted that he departed from El Salvador, as he feared for his life, and entered the Mexico-United States border on September 6, 2014. The Applicant asserted that he departed the United States on April 19, 2014 to visit his mother and to consult with her doctors to discuss her medical condition. The Applicant contended that his absence was brief, casual, and innocent.

The Applicant submitted evidence of his Form I-512L issued on March 15, 2013, and valid until September 9, 2013; a copy of his flight itinerary from United Airlines indicating that airline tickets had been purchased in his name departing April 19, 2014 from [REDACTED] New Jersey to [REDACTED] El Salvador with a returning date of May 10, 2014; a copy of his El Salvador passport reflecting entry stamps into El Salvador on March 26, 2011 and April 19, 2014, and parole stamps indicating he was

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paroled into the United States on April 16, 2011 and May 18, 2013; and a copy of a letter dated October 1, 2014, from his employer, [REDACTED] attesting to the Applicant's employment since April 1995. The Applicant also submitted a letter with English translation dated September 27, 2014, from his mother's medical doctor, who indicated that his mother has been the doctor's patient since 2011, that the mother has been diagnosed with chronic obstructive pulmonary disease, and that in the last six months the mother has had progressive health impairment that required treatment in the hospital.

On appeal, the Applicant resubmits the documents and reiterates his previous statements.

An applicant 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.

As the Applicant previously applied for advance parole, it does not appear that he willfully failed to submit a Form I-131 in 2014. Due to his reliance of an incorrect reading of his earlier Form I-512L, the Applicant departed the United States on April 19, 2014 without a new advance parole. The Applicant has provided his flight itinerary establishing it was his intention to return to the United States within 22 days, along with a letter from his mother's doctor corroborating his reason for departing the United States on April 19, 2014. We find that the cumulative evidence provided by the Applicant is sufficient to establish that the absence from the United States from April 19, 2014 to May 10, 2014 was brief, casual, and innocent as defined in 8 C.F.R. §244.1.

The Applicant, however, has not presented evidence that adequately explains the reason for the three-month lapse from May 11, 2014, upon notification that his advance parole had expired, until August 13, 2014, upon the filing of his Form I-131. Accordingly, the Applicant's absence from May 11, 2014 to September 5, 2014 cannot be considered to be brief, casual and innocent. The Applicant's absence during this period was not of short duration and reasonably calculated to accomplish the purpose for the absence. Consequently, the applicant has failed to maintain continuous physical presence in the United States. 8 C.F.R. § 244.14(a)(2). The Director's decision to withdraw the Applicant's TPS will not be disturbed.

In application proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of W-I-R-*, ID# 14012 (AAO Sept. 10, 2015)