



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

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

MATTER OF S-A-C-

DATE: SEPT. 27, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Applicant, a native and citizen of El Salvador, seeks review of a decision withdrawing the Applicant's Temporary Protected Status (TPS). *See* Immigration and Nationality Act (the Act) section 244, 8 U.S.C. § 1254a. Temporary Protected Status provides lawful status and protection from removal for foreign nationals, of specifically designated countries, who register during designated periods, satisfy country-specific continuous residence and physical presence requirements, are admissible to the United States, are not firmly resettled in another country, and are not subject to certain criminal- and security-related bars.

The Director, Vermont Service Center, withdrew the Applicant's TPS. The Director concluded that the Applicant had not remained continuously physically present in the United States after travelling to El Salvador from December 2014 until February 2015.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and states that the Director erred in withdrawing the Applicant's TPS because he had obtained advanced parole prior to departing the United States, which he asserts is sufficient to ensure that his travel did not break his continuous physical presence in the United States. In the alternative, the Applicant states that his absence was brief, casual, and innocent, as he was helping his mother recover from surgery and then attempting to return to the United States.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking review of a decision withdrawing the Applicant's TPS. 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). Section 244 of the Act, 8 U.S.C. § 1254a, 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 foreign national establishes that he or she meets the specified criteria. Section 244(c)(3) of the Act provides that the Secretary shall withdraw TPS granted to a foreign national under this section if:

....

- (B) except as provided under paragraph (4) and permitted in subsection (f)(3), the alien has not remained continuously physically present in the United States from the date the alien first was granted temporary protected status under this section. . . .

The burden of proof is upon the Applicant to establish that the above requirements are met. See 8 C.F.R. § 244.9(a)(3). Applicants shall submit all documentation as required in the instructions or requested by United States 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.*

II. ANALYSIS

The issue presented on appeal is whether the Applicant's departure from the United States from December 2014 until February 2015 interrupted his continuous physical presence. The Applicant asserts that he did not interrupt his continuous physical presence as he traveled pursuant to a grant of advance parole. He also asserts that his trip was brief, casual, and innocent insofar as he remained in El Salvador only long enough to assist his mother after her unexpected surgery, but because his advance parole document expired while he was in El Salvador, he spent the next several weeks attempting to return to the United States.

The record contains a brief; statements from the Applicant, his sister, and an acquaintance in El Salvador; immigration forms, applications, and related correspondence; medical records; copies of an airplane boarding pass; a birth certificate and other identity documents; and tax and employment records.

After reviewing the entire record, we conclude that the Applicant has not established that he maintained his continuous physical presence. The Applicant's assertion regarding advance parole is not supported by statute, regulation, or the document itself, and he has not produced sufficient evidence to establish that his absence was brief, casual, and innocent.

A. Eligibility

As stated above, the Applicant's TPS was withdrawn pursuant to section 244(c)(3)(b) of the Act.

The Applicant asserts that he has been continuously physically present in the United States since the date he was first granted TPS. The regulation at 8 C.F.R. § 244.1 provides:

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.

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.

8 C.F.R. § 244.1.

1. Advance Parole

The Applicant claims that his departure from the United States should not be deemed an interruption of his continuous physical presence because he had obtained Form I-512L, Authorization for Parole of an Alien into the United States (also referred to as advance parole) prior to his departure on December 18, 2014. He asserts that any absence he took from the United States cannot be considered a break in continuous physical presence because he had first obtained a Form I-512L. In support, the Applicant cites the TPS regulations regarding withdrawals. As previously stated, the regulations provide that USCIS may withdraw TPS if the foreign national has not remained continuously physically present in the United States from the date TPS was first granted. 8 C.F.R. § 244.14(a)(2). The regulation continues to state that:

For the purpose of this provision, an alien granted [TPS] 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. . . .

Id.

An individual with TPS obtains a Form I-512L by submitting a Form I-131, Application for a Travel Document. The instructions for the Form I-131 explain that:

If you have TPS and leave and reenter the United States during the validity period of your Advance Parole Document, you will not break the continuous physical presence requirement for maintaining your TPS.

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See USCIS, *Instructions for Application for Travel Document* p. 4 (May 3, 2016), <http://www.uscis.gov/sites/default/files/files/form/i-601instr.pdf>.

However, the Applicant did not reenter the United States during the validity period of the document, nor did he comply with other terms of the Form I-512L. His document was valid for parole into the United States only until January 1, 2015, yet he did not return until February 5, 2015. Further, he did not seek entry into the United States by presenting the form to a U.S. Customs and Border Protection (CBP) Inspector at a port of entry, as the form instructs. Rather, he re-entered without inspection at a point near the [REDACTED] port of entry. Moreover, the Form I-512L states that parole into the United States is not guaranteed, as the bearer is still subject to inspection to determine whether he or she is eligible to enter the United States.

In sum, the Form I-512L contains specific requirements and warnings, with which the Applicant did not comply. As such, we are not persuaded by the Applicant's assertion that his possession of a Form I-512L means that any subsequent travel, especially travel outside the terms of the Form I-512L, cannot be considered for withdrawal of TPS.

2. Brief, Casual, and Innocent Absence

The Applicant asserts, in the alternative, that his absence from the United States was brief, casual, and innocent, and therefore he has maintained his continuous physical presence. However, we find that the evidence does not establish that his absence was of short duration and reasonably calculated to accomplish the purpose for the absence.

The Applicant asserts that his stay in El Salvador was unexpectedly extended because his mother required surgery for a hernia on January 2, 2015. The Applicant submitted a letter from the surgeon verifying the procedure. The surgeon stated that the patient (the Applicant's mother) was given 30 days of incapacity following the procedure, and the Applicant covered the medical expenses and post-operative care. According to the Applicant's statement, he stayed with his mother until leaving El Salvador on January 18, 2015, and then travelled through [REDACTED] and Mexico before entering the United States on February 5, 2015. The Applicant also submitted a statement from his sister reiterating their mother's surgery and the Applicant's service as her caretaker, and he submitted an additional statement from an acquaintance who states that the Applicant was in El Salvador during the first week of January 2015.

The Applicant's statements and supporting documents lack sufficient detail for us to conclude that his absence was reasonably calculated to accomplish its purpose. The surgery was performed after the Applicant's Form I-512L expired on January 1, 2015, and he departed El Salvador sooner than 30 days after the surgery, even though the surgeon's letter stated that his mother required 30 days to recover. Moreover, he has not produced evidence that he originally planned to return to the United States within the validity period of his advance parole. As such, this timeline raises questions as to the Applicant's intended return travel to the United States and its relation to his mother's medical needs. Further, the Applicant has not explained or established why he was required to care for his mother, when he had at least one other immediate family member—his sister—living in El Salvador.

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Furthermore, the Applicant has not provided any specific details about his return travel to explain why he needed over 2 weeks to reach the United States.

In view of the sparse information about the purpose of the Applicant's trip and why he remained absent for a period of 49 days—34 days beyond the expiration of his advance parole—the Applicant has not shown that his trip was brief, and he has not shown that its duration was reasonably connected to its purpose.

Accordingly, we find that the Applicant has not maintained continuous physical presence in the United States.

III. CONCLUSION

An applicant for TPS has the burden of proving that he or she meets the requirements for this benefit and is otherwise eligible under the provisions of section 244 of the Act. The Applicant has not established eligibility for TPS. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of S-A-C-*, ID# 119119 (AAO Sept. 27, 2016)