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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

MAI



FILE: [Redacted]
[LIN 02 253 52246]

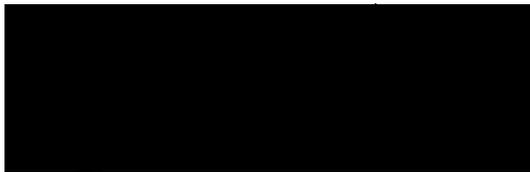
Office: NEBRASKA SERVICE CENTER

Date: SEP 10 2012

IN RE: Applicant: [Redacted]

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center. The case is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter will be remanded for further action.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director initially denied the application on February 6, 2003, because the applicant failed to establish that he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

The applicant filed a late appeal that was improperly submitted directly to the Administrative Appeals Office (AAO) on April 14, 2003. The late appeal was received at the Nebraska Service Center on April 25, 2003. The director treated the late appeal as a motion to reopen. The director subsequently dismissed the motion on June 26, 2003, after determining that the Form G-28, Notice of Entry as Attorney or Representative of Record, was unsigned by the applicant and, therefore, that the motion had not been filed by an affected party. The director informed the applicant that an appeal to the June 26, 2003, decision could be filed within 30 days from the date the decision was served. On July 24, 2003, the instant appeal was filed.

On appeal, counsel for the applicant states that she believed a Form G-28 was previously on file in light of Citizenship and Immigration Services (CIS) correspondence to her regarding the applicant's case. Counsel submitted a properly executed Form G-28, signed by the applicant and counsel, but did not submit any other additional evidence.

It is noted that the applicant indicated on his Form I-821, Application for Temporary Protected Status, filed on August 5, 2002, that this was an initial application to register for TPS. On the Form I-765, Application for Employment Authorization, however, the applicant indicated that he had applied for employment authorization in 2001, and that authorization had been granted through September 9, 2002. The record contains a photocopy of the applicant's employment authorization card (EAD), indicating that his employment authorization was granted under category C19, valid from August 7, 2001 through September 9, 2002, during the initial registration period for Salvadorans. The EAD card is identified with the file number [REDACTED] LIN 01 211 53144. The Form I-797, approval notice, for the August 7, 2001, employment authorization is also included in the record.

The record contains a letter dated August 1, 2002, from the applicant's former counsel stating that: "[the applicant's] first application was denied for failure to respond to a request for evidence regarding proof of residence. At this time he is filing an initial application again." In this case, the information included in this temporary A-file does not include the 2001 TPS application, its procedural history, the director's decision, and any correspondence from the applicant related to that case. The record does not reflect the director's acknowledgement or review of the applicant's prior application before a decision was rendered on the current application.

The evidence contained in this file is not sufficient to support the director's decision of denial. Therefore, the case will be remanded. The director shall review all CIS records pertaining to this applicant and all files relating to this individual's TPS application history shall be consolidated into the record of proceedings. The director shall

issue a new decision that, if adverse to the applicant, shall be certified to the AAO for review. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

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 matter is remanded for further action.