

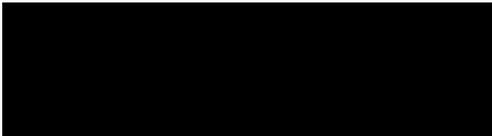


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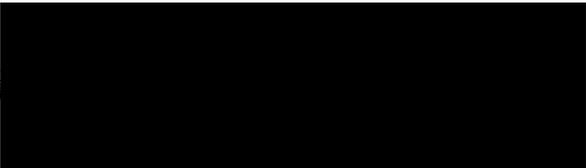
FILE: [REDACTED]  
[WAC 01 171 50587]

Office: CALIFORNIA SERVICE CENTER Date: AUG 30 2005

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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 denied the application after determining that the applicant was inadmissible to the United States under section 212(a)(9) of the Act, and had not submitted a Form I-601, Application for Waiver of Grounds of Inadmissibility, based upon an order of removal issued at San Francisco, California, on January 5, 1998.

On appeal, counsel asserts that the applicant is not inadmissible under section 212(a)(9) of the Act because the record does not contain any evidence that the applicant departed the United States under an order of deportation as stated by the director in his decision. Counsel further asserts that section 212(a)(9) of the Act does not render the applicant ineligible for TPS because she "is not seeking admission to the United States." Finally, counsel asserts that the director did not provide the applicant an opportunity to file Form I-601, Application for Waiver of Grounds of Excludability; rather, the director instructed the applicant in the Notice of Intent to Deny dated January 9, 2004, to submit an approved Form I-601 within 30 days of the issuance of the notice.

The applicant claims that she first entered the United States on January 15, 1989. She filed an application for asylum on July 23, 1992. She subsequently filed an application for suspension of deportation. Both applications were denied by the Asylum Office in San Francisco, California, on May 1, 1996, and the applicant was referred for a removal hearing before an Immigration Judge.

On January 5, 1998, an Immigration Judge in San Francisco, California, found the applicant removable under section 241(a)(1)(B) of the Act in that she entered the United States without inspection. The Immigration Judge granted the applicant the privilege of voluntary departure on or before July 6, 1998, with an alternate order of deportation if she failed to depart as ordered.

On May 13, 2000, the District Director, San Francisco, issued a notice ordering the applicant to report to the District Office in Bakersfield, California, on June 14, 2000, for removal to El Salvador. The notice bears a notation from a deportation officer indicating that the applicant failed to appear to be deported as ordered. The record also contains a Form I-205, Warrant of Removal/Deportation, issued by the District Director, San Francisco, on January 5, 1998. To date, the warrant is still outstanding.

TPS serves to protect an applicant temporarily from removal from the United States, if all other requirements of section 244 of the Act and the regulations are met. A waiver is not required if the applicant has departed the United States under a previously issued order of removal based on section 242 of the Act. In this case, the applicant failed to appear to be deported on January 5, 1998, as ordered, and the record contains no evidence that the applicant has departed the United States since that date. Since the applicant has not departed the United States under an order of removal, she is not required to file a Form I-601, Application for Waiver of Ground of Excludability. The sole ground for denial of the application has been overcome. Therefore, the director's decision will be withdrawn, and the appeal will be sustained.

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. Here, the applicant has met this burden.

**ORDER:** The appeal is sustained.