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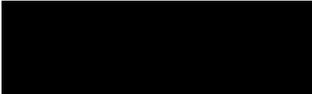


U.S. Citizenship
and Immigration
Services

MI



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **JAN 13 2005**

IN RE:

Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

Cindy M. Gomez for

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 The decision of the director will be withdrawn, and the matter will be remanded for further consideration and action..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 noted that the applicant was found inadmissible by an Immigration Judge under section 212(a)(6)(C) of the Act for willful misrepresentation of a material fact in order to obtain an immigration benefit, and was subsequently deported from the United States on January 6, 1999. [REDACTED] The director denied the application because the applicant had not filed Form I-601, Application for Waiver of Grounds of Excludability, and specifically stated, “[t]he applicant may submit a Form I-601, Application for Waiver of Grounds of Excludability with fee (\$170.00), if the applicant believes he or she is eligible for such waiver.”

On appeal, the applicant requests a 60-day extension in which to seek representation and submit a brief and/or additional evidence. The applicant makes no other assertions nor has he submitted any additional evidence. Further, there is no indication in the record that the applicant has filed a Form I-601.

Pursuant to 8 C.F.R. § 244.3(b), Citizenship and Immigration Services (CIS) may waive inadmissibility under the provisions of section 212(a) of the Act in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. If an alien is inadmissible on grounds that may be waived, he or she shall be advised of the procedures for applying for a waiver of grounds of inadmissibility on Form I-601. Here, the applicant was found inadmissible under section 212(a)(6)(c) of the Act.

In this case, the director denied the application without issuing a notice of intent to deny or a request for additional evidence advising the applicant of the procedure for applying for a waiver of grounds of inadmissibility on Form I-601.

The director shall provide the applicant with the opportunity to file a Form I-601 and shall fully adjudicate the Form I-601 and the Form I-821. It is noted that Federal Bureau of Investigations (FBI) records indicate that the applicant was arrested by police officers in Huntington Beach, California, on June 8, 2003, and charged with one count of “BAT, SPOUSE, EX SP/DATE/ETC.” The applicant has not provided a certified copy of the final court disposition of that charge. Finally, it is noted that the applicant has not submitted sufficient evidence to establish continuous residence in the United States since February 13, 2001, or continuous physical presence in the United States since March 9, 2001.

Accordingly, the matter is remanded for action consistent with the foregoing. 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 director’s decision is withdrawn. The matter is remanded for further consideration and action.