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**JAN 25 2005**

FILE:  Office: CALIFORNIA SERVICE CENTER Date:  
WAC 04 286 53998

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.

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

**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn, and the matter will be remanded for further consideration and action..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 was granted Temporary Protected Status (TPS) on June 22, 2001. On July 22, 2002, the applicant filed a re-registration application for the 2002-2003 period.

The director noted that the applicant was summarily removed from the United States on January 5, 1998, after it was determined that she attempted entry using a counterfeit temporary Form I-551 (Form I-94) for lawful permanent residence. The director determined that the applicant is inadmissible to the United States under section 212(a)(6)(C) of the Act as an alien who attempted to obtain admission into the United States through fraud. Therefore, the director denied the application because the applicant had failed to file a Form I-601, Application for Waiver of Ground of Excludability. The director stated, "[t]he applicant may submit a Form I-601, Application for Waiver of Grounds of Excludability, with fee if the applicant believes he or she is eligible for such waiver." 8 C.F.R. § 244.2(d).

On appeal, the applicant states that she filed a Form I-601 concurrently with the Form I-290B, Notice of Appeal to the Administrative Appeals Unit. She requests that her waiver application be granted for reasons of family unity. She further requests that she be granted TPS.

It is noted that an unadjudicated Form I-601 is included in the record.

Pursuant to 8 C.F.R. § 244.3(a), an alien's inadmissibility to the United States under 212(a)(6)(c) of the Act as an alien who sought admission to the United States by fraud shall not render him or her ineligible for TPS.

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, Application for Waiver of Grounds of Excludability.

The applicant filed the Form I-601 concurrently with the appeal. Therefore, the matter will be remanded and the director shall fully adjudicate the Form I-601 and the Form I-821. 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.