

identifying data deleted to
prevent unauthorized disclosure
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

M

MAY 17 2005

FILE:

[REDACTED]

Office: SAN FRANCISCO

Date:

[WAC 01 185 54114]

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:

[REDACTED]

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

DISCUSSION: The application for Temporary Protected Status (TPS) was approved. The District Director, San Francisco, subsequently withdrew the applicant's TPS. An appeal of the decision to withdraw TPS is currently before the Administrative Appeals Office (AAO). The decision of the district director is withdrawn and the appeal will be sustained.

The applicant is a native and citizen of El Salvador who indicated on his application that he last entered the United States without a lawful admission or parole in 1998. The district director determined that the applicant had been deported on February 25, 1997, and had reentered the United States within five years without authorization. The district director concluded that the applicant was ineligible under section 241(a)(5) of the Immigration and Nationality Act (Act) and withdrew the applicant's TPS.

The facts of the case indicate that the United States Border Patrol (USBPS) at McAllen, Texas, apprehended the applicant on February 23, 1996, under record [REDACTED] now incorporated within [REDACTED] and removal proceedings were initiated. The applicant also was apprehended on February 13, 1997, by the USBPS at Dublin, California, under record [REDACTED] using the name [REDACTED] and was again placed into removal proceedings. It is noted that, at the time of his apprehension, the applicant had in his possession a counterfeit Form I-551, Permanent Resident Card, bearing his name and photo.

The applicant was removed [deported] from the United States on February 25, 1997. He indicates that he reentered the United States in July 1998 without inspection. On March 15, 1999, he applied for asylum. On December 16, 1999, he was found to have established a reasonable fear of persecution and a reasonable fear of torture. Based on this, he was referred to an Immigration Judge for a withholding of removal hearing.

The applicant filed for TPS during the initial registration period for TPS on April 9, 2001. On December 6, 2001, the Immigration Judge, San Francisco, administratively closed the withholding of removal hearing, stating: "[R]espondent's request based on application for TPS. No opposition by INS." The applicant's previous immigration history was contained within the record. The TPS application was granted on April 10, 2002.

On September 5, 2002, the district director issued a withdrawal of TPS notification to the applicant, stating: "You are an alien who has been removed from the United States who reentered within 5 years without permission from the Attorney General. Section 241(a)(5) states...the alien is not eligible and may not apply for any relief under this Act...."

Section 241(a)(5) of the Act states, in pertinent part:

Reinstatement of removal orders against aliens illegally reentering.—If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry.

Section 244(a)(1) of the Act states, in pertinent part:

In general.—In the case of an alien who is a national of a foreign state designated under subsection (b) (or in the case of an alien having no nationality, is a person who last habitually

resided in such designated state) and who meets the requirements of subsection (c), the Attorney General, in accordance with this section—

(A) may grant the alien temporary protected status in the United States and shall not remove the alien from the United States during the period in which such status is in effect, and....

Section 244(g) of the Act states:

Exclusive Remedy. —Except as otherwise specifically provided, this section shall constitute the exclusive authority of the Attorney General under law to permit aliens who are or may become otherwise deportable or have been paroled into the United States to remain in the United States temporarily because of their particular nationality or region of foreign state of nationality.

Within these thresholds, certain other statutory and regulatory provisions also must be met. An applicant for TPS must be eligible for TPS under section 244(c) of the Act. Under 244(c)(1)(A)(iii) of the Act, an alien must be admissible as an immigrant. In determining an applicant's admissibility, any provision of 212(a)[except certain provisions of (2) and (3)], as it applies to admissibility may be waived in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

For purposes of TPS, section 241(a)(5) of the Act does not apply. The provisions of the TPS program do not prevent eligibility if an individual was previously removed [deported] from the United States under section 241 [now section 237] of the Act. Therefore, the applicant has overcome the reasons for the district director's denial of the TPS application, the appeal will be sustained, and the application will be approved.

It is also noted that the record indicates that the applicant is the beneficiary of an approved immigrant visa petition filed by his United States citizen wife.

An alien applying for TPS has the burden of proving that he or she meets the requirements of, and is otherwise eligible under, the provisions of section 244 of the Act. Here, the applicant has met that burden.

ORDER: The director's decision is withdrawn. The appeal is sustained.