

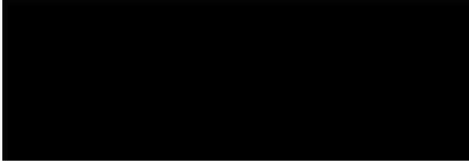
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: California Service Center

Date:

MAY 24 2005

[WAC 01 173 50106]

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:



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 was denied 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 The decision of the director will be withdrawn, and the matter will be remanded for further consideration and action..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 claims to be a native and citizen of El Salvador who was granted Temporary Protected Status (TPS) on June 22, 2001.

The district director denied the application, noting that the applicant had previously attempted entry into the United States using another individual's Form I-586, Nonresident Alien Crossing Card, and was, therefore, determined to be inadmissible to the U.S. section 212(a)(6)(C)(i) of the Act, as an alien who attempted to obtain admission into the United States through fraud or misrepresentation. In his denial notice, the director also 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."

On appeal, the applicant, through her attorney, submits a completed Form I-601 concurrently with the Form I-290B Notice of Appeal to the Administrative Appeals Unit, along with additional evidence in support of her claim.

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 may apply for a waiver of grounds of inadmissibility on Form I-601.

The applicant in this case has filed a completed Form I-601 concurrently with the appeal. However, the I-601 has not yet been adjudicated. 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.

It is noted that at the time of the apprehension on September 6, 2000, the applicant claimed to be a citizen of Mexico, and that she was removed to Mexico under expedited removal proceedings under section 235(b)(1) of the Act.

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.