



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

MI



FILE:

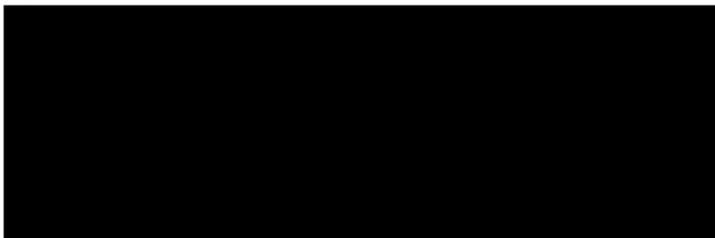


OFFICE: CALIFORNIA SERVICE CENTER DATE: OCT 16 2006

[WAC 05 190 71981]

IN RE:

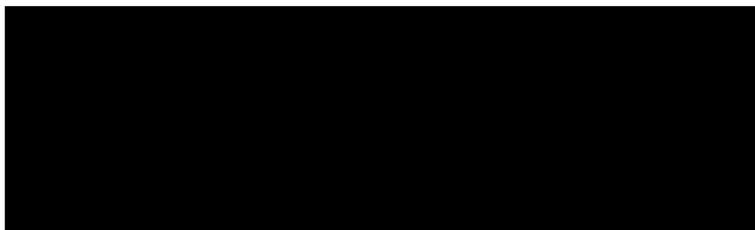
Applicant:



APPLICATION:

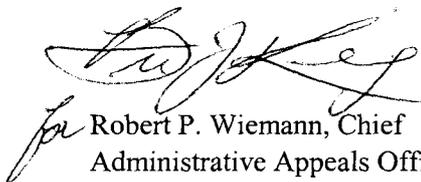
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, California Service Center. A subsequent application for re-registration was denied by the Director, California Service Center, and is currently before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office, and the case will be remanded for further consideration and action.

The applicant is stated to be 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 applicant filed an initial application for TPS on September 11, 2001, under receipt number WAC 01 293 58491. The director denied the initial application on March 13, 2006, after determining that the applicant had failed to provide the final court dispositions for his arrests.

However, the record of proceedings reveals that the director's decision was in error. The record reveals that on September 28, 2005, the applicant was requested to provide the final court dispositions for his arrests. On October 31, 2005, the applicant provided a letter, dated October 12, 2005, from the Monterey Police Department, which stated the applicant was arrested on January 9, 2000 for spousal battery. The director denied the application on March 13, 2006, because the applicant failed to provide the final court dispositions for **all** of his arrests.

In his appeal, the applicant submits the court dispositions for his January 9, 2000 arrest, which demonstrates that the applicant was convicted of a misdemeanor. He also provides the court disposition for his August 9, 1995 arrest, which demonstrates that the charge was dismissed after the applicant completed a diversion program. Since the applicant's charge was dismissed, there is no conviction for immigration purposes. Based on this evidence, the applicant has only been convicted of one misdemeanor.

However, it is noted that the applicant was arrested by the Salinas Sheriff's Office, on June 27, 2000 for spousal battery. The applicant failed to provide the court disposition for this arrest.

Since the applicant did provide the final court dispositions for his arrests, demonstrating that he was only convicted of one misdemeanor, the director's decision on the initial application will be withdrawn and the application will be remanded for a new decision. The director's denial of the application for re-registration is dependent upon the adjudication of the initial application. Since the initial application is being remanded, that decision will be remanded to the director for further adjudication. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS offered to Salvadorans.

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 initial application is reopened, the director's decision is withdrawn, and the application is remanded to the California Service Center for a new decision. The re-registration application is remanded for further action consistent with the director's new decision on the initial application.