U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] OFFICE: CALIFORNIA SERVICE CENTER DATE: SEP 28 2006
[WAC 05 225 92343]
[WAC 01 171 55620]

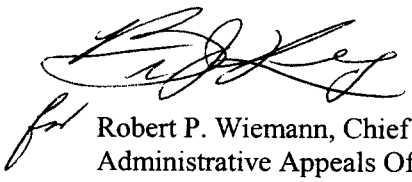
IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT: 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.



for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the District Director, Los Angeles, California. 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 claims 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 record reveals that the applicant filed a TPS application during the initial registration period on March 27, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 171 55620. The district director denied that application on April 13, 2005, because the applicant had been convicted of the felony offense of "CRIM/SALE OF CONTROLLED SUBSTANCE" on March 29, 1997, in New York. The district director, however, erroneously advised the applicant that there is no appeal from her decision. Further, it is noted that the actual final court disposition of the applicant's arrest is not contained in the record of proceeding, nor is there evidence that the district director requested that the applicant furnish the final court dispositions of all of his arrests.

Regulations at 8 C.F.R. § 244.10(c) states, in part:

> The decision of the director to deny Temporary Protected Status, a waiver of grounds of inadmissibility, or temporary treatment benefits shall be in writing served in person or by mail to the alien's most recent address provided to the Service and shall state the reason(s) for the denial. Except as otherwise provided in this section, the alien shall be given written notice of his or her right to appeal a decision denying Temporary Protected Status.

Additionally, regulations at 8 C.F.R. § 103.2(b)(19) states, in part:

> An applicant or petitioner shall be sent a written decision on his or her application, petition, motion, or appeal. Where the applicant or petitioner has authorized representation pursuant to § 103.2(a), that representative shall also be notified.

Accordingly, the district director's denial of the initial application will be withdrawn, and the application will be remanded for a new decision and to give the applicant notice of his right to appeal the decision. The director shall accord the applicant the opportunity to submit the final court dispositions of all arrests obtained from the court(s) where the hearings took place, including arrests listed on the Federal Bureau of Investigation (FBI) fingerprint results report, listed below.

The Director, California Service Center's denial of the application for re-registration or renewal 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.

The FBI report reveals the following offenses:

(1) On March 29, 1997, in New York, New York, the applicant (name used: [redacted] was arrested for Count 1, criminal possession of a controlled substance-3;

and Count 2, criminal possession of a controlled substance-3. The FBI report shows that the applicant was subsequently convicted of attempted criminal sale of a controlled substance; however, the actual final court disposition of this offense is not contained in the record.

(2) On August 7, 1997, in New York, New York, the applicant (name used: was arrested for Count 1, criminal possession of a controlled substance-3; and Count 2, criminal possession of a controlled substance-5. The final court disposition of this arrest is not contained in the record.

(3) On August 5, 2000, in Los Angeles, California, the applicant (name used: was arrested for force/assault with a deadly weapon not firearm, great bodily harm. The final court disposition of this arrest is not contained in the record.

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 for a new decision. The re-registration application is remanded for further action consistent with the director's new decision on the initial application.