



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
[WAC 05 243 70340]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: AUG 27 2007

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.

Robert P. Wiemann
for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC), and is now before the Administrative Appeals Office on appeal. The case will be remanded to the director for further action.

The applicant is 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 director denied the application because the applicant had “failed to register in a timely manner.”

On appeal, counsel asserts that the director was in error to deny the application alleging failure to register within 60 days of the denial of Form I-698 [Application to Adjust Status from Temporary to Permanent Resident] because the record shows that the applicant applied for TPS on May 8, 2005,¹ and at that time the applicant had not been notified that his Form I-698 had been denied until August 15, 2005.

A review of the record of proceeding indicates that on April 27, 1989, the applicant was granted lawful temporary resident status under section 245A of the Act. The applicant was required to file an application to adjust status from temporary to permanent resident status no later than November 26, 1992. Because the application was untimely filed (on July 20, 1999), the CSC director terminated the applicant’s temporary residence on October 11, 2004. The record also contains a letter dated August 15, 2005, from the Los Angeles district director advising the applicant that his application for temporary residence, Form I-698, was denied on February 4, 2005. Based on that letter, on October 3, 2005, the applicant filed Form I-694, Notice of Appeal, appealing the termination of his temporary resident status. That appeal is pending.

While a pending Form I-698 and Form I-687 during the initial registration period for TPS would render the applicant eligible for late initial registration described in 8 C.F.R. § 244.2(f)(2)(ii), as noted above, the applications were denied and/or terminated prior to the date the applicant filed his initial TPS application, and more than 60 days from the date of termination or denial, whichever came later. The record, however, contains an unadjudicated Form I-694 appealing the applicant’s termination of his temporary resident status.

Therefore, the case will be remanded for adjudication of the Form I-694, and for further review of the applicant’s file. 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 case is remanded for appropriate action consistent with the above discussion and entry of a new decision.

¹ The initial TPS application was received at the California Service Center on May 31, 2005.