



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

[WAC 99 164 50466]

OFFICE: California Service Center

DATE:

DEC 31 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 California Service Center. Any further inquiry must be made to that office.

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 (AAO) on appeal. The case will be remanded to the director for further consideration and action.

The applicant is a native and citizen of Honduras 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 TPS application and noted that the applicant is inadmissible to the United States, pursuant to section 212(a)(9) of the Act, and, as such, is prohibited from entering, attempting to enter, or being in the United States for a period of 10 years from April 21, 1997, the date of his departure from the United States, after he had been ordered deported from the United States by an immigration judge in proceedings commenced before April 1, 1997 under section 242 of the Act. The director stated in the denial that the applicant may submit a Form I-601, Application for Waiver of Grounds of Excludability, with proper fee, if the applicant believed he is eligible for such waiver.

On appeal, counsel for the applicant states that the Service erred in denying the application for TPS because the applicant should have been given an opportunity to submit a Form I-601 application. Counsel asserts that the applicant has complied with all requirements and requests made by the Service in connection with his TPS application, and that he would have submitted the Form I-601 application if he had been given the opportunity to do so.

The record reflects that the applicant submitted his initial application for TPS on May 17, 1999. He stated on the Form I-821 that he had been in deportation proceedings in 1994. The record, however, contains a Form I-205, Warrant of Deportation, indicated that an immigration judge ordered the applicant deported on April 21, 1997, based on the applicant's entry without inspection on April 10, 1997.

On September 4, 1999 the applicant was requested to furnish evidence of his identity and his nationality, and evidence to establish his continuous residence in the United States since December 28, 1998 and his continuous physical presence in the United States since January 5, 1999. The applicant was not requested to submit a Form I-601 waiver. The applicant responded to the director's request by submitting some evidence for the period from October 28, 1998 through March 30, 1999; however, the director did not address the adequacy of this evidence in the denial notice.

On appeal, counsel submitted a Form I-601; however, it was returned to counsel by the CSC director on December 11, 2003, with instructions to file the form and the filing fee at the district office. The Form I-601 and the fee were received at the Los Angeles District Office on January 8, 2004, and subsequently forwarded to the AAO, without action. While a previous deportation may not render an applicant ineligible for TPS, the adjudication of the Form I-601 falls within the jurisdiction of the district director.

Accordingly, the case will be remanded so that the district director may adjudicate the waiver application. An adverse decision on the waiver application may be appealed to the AAO. In addition, as the CSC director did not address the evidence submitted by the applicant in response to the September 4, 1999 request, the applicant shall be afforded an opportunity to submit additional evidence to establish his continuous residence in the United States

from December 28, 1998 and his continuous physical presence from January 5, 1999.

As always in these proceedings, the burden of proof remains solely on the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The case is remanded to the director for entry of a new decision consistent with the above.