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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] OFFICE: California Service Center DATE: FEB 21 2007

[WAC 02 193 53597]
[WAC 05 137 73105]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, issued a notice of intent to deny the first application and denied the second application. The second application is now on appeal before the Administrative Appeals Office (AAO). The director's decision on the second application will be withdrawn. The matter will be remanded to the director for the entry of new decisions on both applications.

The applicant claims to be a 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 an initial Form I-821 for TPS [WAC 02 193 53597] on May 22, 2002. Noting that the applicant indicated on Form I-821 that he did not enter the United States until February 10, 2002, the director denied the application on September 5, 2002, on the ground that the applicant had not resided continuously in the United States since February 13, 2001, as required for El Salvadoran citizens applying for TPS. The applicant filed a timely appeal, after which the director decided, on January 3, 2003, to vacate his previous decision, reopen the proceeding, and give the applicant 30 days to submit additional documentation, including evidence of continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001 to the date the application was filed. The applicant filed a timely response, but the director neglected to issue a new decision. The application was erroneously forwarded to the AAO, which remanded the matter to the director on November 2, 2005, for the entry of a new decision.

Meanwhile, the applicant filed an application to re-register for TPS [WAC 05 137 73105] on February 14, 2005. That application was denied by the director on January 5, 2006, on the ground that the applicant's initial TPS application was denied, making him ineligible to re-register for TPS. Since no decision has been rendered on the applicant's initial TPS application, however, there was no legal basis for the director to decide on his subsequent application for re-registration. A decision on the re-registration application is predicated on the decision rendered on the initial TPS application.

Therefore, the case will be remanded to the director for the entry of a new decision on the applicant's initial TPS application [WAC 02 193 53597], as well as on his current re-registration application [WAC 05 137 73105].

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 to the director for further action consistent with the above and the entry of new decisions on the initial application and the current re-registration application.