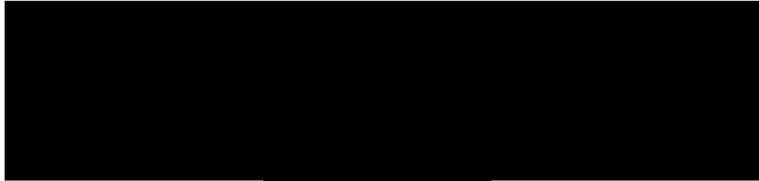




U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

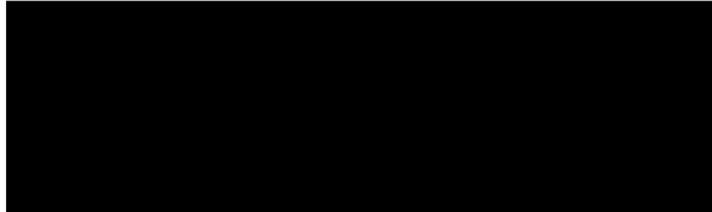
DATE: FEB 28 2007

[WAC 05 224 75827]

[WAC 01 287 58174]

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:

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.

fw Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, 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 record reveals that the applicant filed a TPS application during the initial registration period on August 27, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 287 58174. On, January 17, 2002, a request for additional evidence (RFE) was issued requesting that the applicant submit evidence establishing continuous physical presence in the United States from March 9, 2001, to the date of filing the application. The applicant responded to the RFE on February 1, 2002, and submitted additional evidence. On February 19, 2002, another RFE was issued requesting that the applicant submit additional evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application. It is noted that the applicant responded to the second RFE approximately one year later, on May 5, 2003, and submitted additional evidence.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 12, 2005, and indicated that this is his "first application to register for Temporary Protected Status (TPS)." The director treated the application as a re-registration application and determined that because the applicant's initial TPS application had been denied, the applicant was not eligible to apply for re-registration for TPS; therefore, the director denied the application on May 5, 2006. On June 1, 2006, the applicant filed Form I-290B, Notice of Appeal to the Administrative Appeals Office, appealing the director's decision.

The record of proceeding does not contain the director's notice denying the applicant's initial TPS application on November 25, 2002, as determined by the director. It is noted, however, that CIS data base indicates that the initial application was denied based on abandonment on November 25, 2002, "SUBJ. NOT SUPPL."

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 case will be remanded so that the director may issue a Notice of Decision relating to the initial TPS application and give the applicant notice of his right to appeal the decision or to file a motion to reopen. 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 to the director for further action consistent with the above.