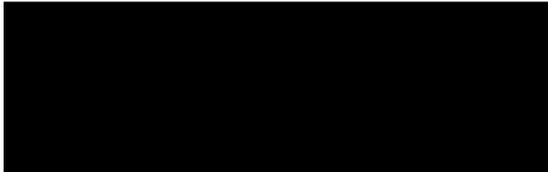




U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: California Service Center

DATE:

JUL 13 2007

[WAC 05 127 70280 – as it relates to
WAC 01 164 51949]

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:



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 initial application was denied by the District Director in Los Angeles, California. The re-registration application was denied by the Director, California Service Center (CSC), and is now on appeal before the Administrative Appeals Office (AAO). The initial application will be reopened, *sua sponte*, by the Chief, AAO. The District Director's decision will be withdrawn and the application remanded to the CSC Director for further consideration and action. The CSC Director's decision on the re-registration application will also be withdrawn and the application remanded for further consideration and action.

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 shows that the applicant filed an initial Form I-821, Application for Temporary Protected Status [WAC 01 164 51949], on March 19, 2001. The application was denied by the District Director on November 3, 2004, on the ground that the applicant was inadmissible to the United States under section 212(a)(9) of the Act because she had previously been deported, in accordance with section 235(b)(1)[i] of the Act, when she made fraudulent and willful misrepresentations to an Immigration Inspector about her nationality and identity after being caught crossing the border at Calexico, California, on August 12, 1999; was removed to Mexico; and then illegally re-entered the United States within five years. The District Director concluded that the applicant's actions made her ineligible for TPS under section 244 of the Act and denied the application. No appeal was filed.

The applicant filed the current TPS application [WAC 05 127 70280], on February 4, 2005, and indicated that she was re-registering for TPS. The CSC Director denied the re-registration application on September 26, 2005, on the ground that since the initial TPS application had been denied, the applicant was ineligible to re-register for TPS.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. *See* 8 C.F.R. § 244.17.

The applicant filed a timely appeal, though the comments of counsel on the Form I-290B appear to be directed as much at the denial of the initial application in November 2004 as at the denial of the re-registration application in September 2005. Upon review of the entire record, the AAO determines that the District Director erred in failing to advise the applicant of her right to file an Application for Waiver of Ground of Inadmissibility (Form I-601) before issuing a decision on her initial TPS application. As provided in 8 C.F.R. § 244.3(b) – *Waiver of grounds of inadmissibility*:

Except as provided in paragraph (c) of this section [relating to criminals and drug offenses, national security, and assisting in Nazi persecution], the Service may waive any other provision of section 212(a) of the Act in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. *If an alien is inadmissible on grounds which may be waived as set forth in this paragraph, he or she shall be advised of the procedures for applying for a waiver of grounds of inadmissibility on Form I-601 (Application for waiver of grounds of excludability). [Emphasis added.]*

Since there is no record that the applicant was advised of the procedures to file a Form I-601 before her initial TPS application was denied in November 2004, that application will be reopened on Service motion and the District Director's decision withdrawn. The initial application will be remanded to the CSC Director for further action consistent with the above and the issuance of a new decision.

Since the decision on the re-registration application hinges on the disposition of the initial application, the CSC Director's decision on that application will also be withdrawn. The re-registration application will be remanded to the CSC Director for the issuance of a new decision once a decision has been rendered on the initial application.¹

As always in these proceedings, the burden of proof rests solely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The initial TPS application [WAC 01 164 51949] is reopened on Service motion and the District Director's decision of November 3, 2004, is withdrawn. The CSC Director's decision of September 26, 2005, on the re-registration application [WAC 05 127 70280] is also withdrawn. Both applications are remanded to the CSC Director for further action, in accordance with the above discussion, and the issuance of new decisions on the initial application and on the re-registration application.

¹ The applicant filed two other re-registration applications – on August 8, 2002 [WAC 02 286 53877] and September 3, 2003 (no receipt number) – both of which were denied with the initial application on November 3, 2004.