

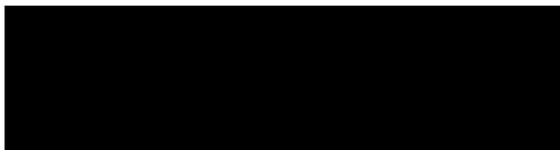
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U.S. Citizenship  
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FILE:



OFFICE: San Diego, California

DATE:

JUN 04 2007

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IN RE:

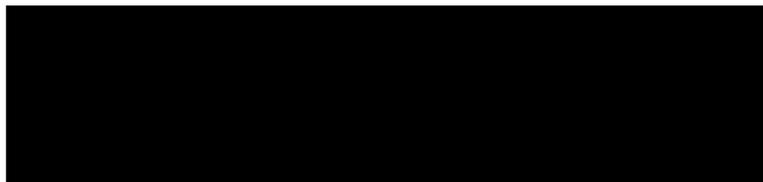
Applicant:



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 application was denied by the District Director in San Diego, California. An appeal was dismissed by the Chief, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be dismissed.

The applicant is 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 applicant filed his initial Form I-821, Application for Temporary Protected Status, on August 17, 2001. On July 8, 2004, the District Director denied the application on the ground that the applicant was ineligible for TPS under section 244A(c)(2)(B)(ii) of the Act, which excludes individuals who have “ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.”

On appeal counsel asserted that the evidence did not support the director’s finding that the appellant is statutorily ineligible for TPS, and that the director denied the applicant a full and fair hearing. The AAO dismissed the appeal on August 26, 2005, citing the findings of an Immigration Judge (IJ) in the applicant’s removal proceedings which the District Director had utilized as the basis of his decision, and pointing out that the applicant had been present at his hearing and had subsequently been provided a record of proceedings.

On September 16, 2005, counsel filed a motion to reconsider, the requirements of which are specified in 8 C.F.R. § 103.5(a)(3):

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy.

On motion, counsel asserts that the IJ’s decision in the applicant’s removal proceedings, which was appealed to the Board of Immigration Appeals (BIA), is still pending. According to counsel, therefore, no final decision has been issued in the removal proceedings with factual and legal findings that bear upon the applicant’s eligibility for TPS.

Counsel’s argument is mistaken. The record shows that the IJ issued his decision in the applicant’s removal proceedings on June 2, 2000. The applicant appealed the decision to the BIA. On June 26, 2001, however, the BIA issued an order, addressed to the applicant’s counsel, stating that:

It appears from the record that the alien in the case before us is a national of El Salvador who may be eligible to apply for TPS. Accordingly, the proceedings before the Board in this case are administratively closed.

If either party to this case objects to the administrative closure of these proceedings, a written request to reinstate the proceedings may be made to the Board. **The Board will take no further action in the case unless a request is received from one of the parties.** [Emphasis in the original.]

There is no evidence in the record of any request by the applicant to reinstate the removal proceedings. Since those proceedings were administratively closed by the BIA on June 26, 2001, the factual and legal findings in the IJ's decision of June 2, 2000, are final. Accordingly, it was proper for the District Director and the AAO to rely on those findings in rendering their decisions on the applicant's eligibility for TPS. Thus, the applicant has failed to establish that the AAO's decision, affirming the District Director's ruling that the applicant is ineligible for TPS, was based on an incorrect application of law or Service policy, as required for favorable action on the motion to reconsider.

As provided in 8 C.F.R. § 103.5(a)(4): "A motion that does not meet the applicable requirements shall be dismissed." Accordingly, the applicant's motion to reconsider will be dismissed.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet that burden.

**ORDER:** The motion to reconsider is dismissed.