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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: **NOV 26 2007**
[A94 495 405 consolidated herein]
[EAC 01 202 56030]

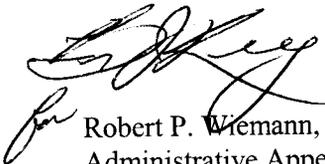
IN RE: Applicant: [REDACTED]

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 office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the application will be approved.

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.

Pursuant to 8 C.F.R. § 103.3(a), when an officer denies an application or petition, the officer shall explain in writing the specific reasons for denial.

The director denied the application because the applicant failed to “submit any evidence you thought would overcome the grounds of denial.” However, the director, in his decision, neither explained the specific reasons for the denial nor cited any grounds for the denial.

On appeal, counsel states that the application was filed on a timely basis, and that sufficient evidence was furnished to demonstrate that the applicant qualifies for TPS. He submits additional evidence to establish the applicant’s continuous residence and continuous physical presence during the requisite periods.

Because the initial TPS application was denied without providing a specific reason for the denial, ordinarily, the case would be remanded for the issuance of a new decision that sets forth the specific reasons for the denial. However, after review of the record of proceeding, it is determined that the record contains sufficient evidence to establish the applicant’s continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Therefore, the director’s decision will be withdrawn, the appeal will be sustained, and the application will be approved.

It is noted that in removal proceedings held on March 19, 1997, the Immigration Judge (IJ) granted the applicant voluntary departure from the United States until September 15, 1997, with an alternate order of deportation to El Salvador. Because the applicant failed to depart as required, a Warrant of Removal/Deportation, Form I-205, was issued on January 16, 1998. The record of proceeding contains an unadjudicated Form I-601, Application for Waiver of Ground of Excludability, filed on December 4, 2004, and a Form I-212, Application for Permission to Reapply for Admission Into the United States after Deportation or Removal, filed on April 3, 2000, requesting waivers based on the removal order by the IJ, and other proceedings before CIS.

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 met this burden.

ORDER: The appeal is sustained.