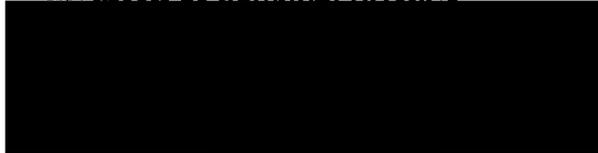




U.S. Citizenship
and Immigration
Services

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invasion of personal privacy



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FILE:



Office: California Service Center

Date: OCT 10 2007

[Incorporating
[WAC 05 197 72195, as it relates to SRC 01 160 58277]]

IN RE:

Applicant:



APPLICATION:

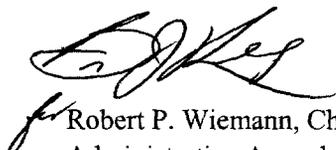
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254.

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 California Service Center. Any further inquiry must be made to that office.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's temporary protected status was denied by the Director, Texas Service Center. A subsequent application for re-registration was denied by the Director, California Service Center, and is currently before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office, and the case will be remanded for further consideration and action.

The applicant is stated 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 TPS application on March 27, 2001 under CIS receipt number SRC 01 160 58277. The director denied the application on December 20, 2002, because the director determined the applicant did not submit required, requested and conclusive evidence that he had not been convicted of one or more felonies or two or more misdemeanors. The record does not reflect that the applicant filed an appeal or a motion to reopen / reconsider within the requisite period.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 15, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application, on January 24, 2006, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

Based on information contained in the FBI report, the director determined that the applicant was ineligible for TPS because he was convicted of one or more felonies or two or more misdemeanors. The instructions regarding the usage of the FBI report, and the provisions of 28 C.F.R § 50.12, state, in part:

If the information on the record is used to disqualify an applicant, the official making the determination of suitability for licensing or employment shall provide the applicant the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. The deciding official should not deny the license or employment based on the information in the record until the applicant has been afforded a reasonable time to correct or complete the information, or has declined to do so.

The record of proceeding, in this case, is devoid of the court's charging documents and final dispositions of the applicant's arrests to establish that he was, in fact, convicted and/or acquitted of the crimes listed in the FBI report. Nor is there evidence in the record that the applicant was requested to submit the court documents of all his arrests.

The case will, therefore, be remanded so that the director may accord the applicant an opportunity to submit arrest reports and the court's final dispositions of all his arrests. The director shall enter a new decision which, if adverse to the applicant, is to be certified to the AAO for review.

The director's denial of the application for re-registration or renewal is dependent upon the adjudication of the initial application. Since the initial application is being remanded, that decision will be remanded to the director for further adjudication. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS offered to El Salvadorans.

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 initial application is reopened, the director's decision is withdrawn, and the application is remanded for a new decision. The re-registration application is remanded for further action consistent with the director's new decision on the initial application.