



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: OCT 30 2007
[REDACTED] consolidated herein]
[WAC 02 254 52850]
[WAC 05 216 72350]

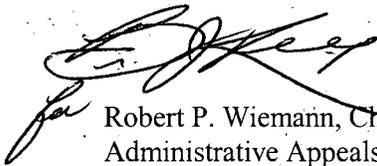
IN RE: Applicant: [REDACTED]

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 initial application was denied by the District Director, San Francisco, California. A subsequent application for re-registration was denied by the Director, California Service Center (CSC), and is currently before the Administrative Appeals Office 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 claims to be 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 7, 2002, under Citizenship and Immigration Services (CIS) receipt number WAC 02 254 52850. The District Director, San Francisco, California, denied that application based on abandonment on February 2, 2004, because the applicant had failed to respond to a request dated October 8, 2003, to submit additional documentation in support of his application.

The record indicates that on October 8, 2003, the applicant appeared at the San Jose CIS office for a scheduled interview regarding his TPS application. In a sworn statement, the applicant stated that he has never been arrested for DUI (driving under the influence). It is noted that the interviewing officer indicated: "Under oath subject stated that he has never been arrested for DUI attached print-out seems that doesn't relate to applicant." It appears that the arrest information was obtained from a memorandum by the California Service Center based on an "NCIC" query. That query information, however, is not contained in the record of proceeding.

At the October 8, 2003 interview, the applicant was requested to submit, within 60 days: (1) certified final court disposition of his "DUI arrest;" and (2) evidence of continuous residence in the United States from May 5, 2003 to October 2003. The San Francisco district director denied the initial TPS application based on abandonment on February 2, 2004, because the applicant had failed to respond to the request for evidence. The applicant did not file a motion to reopen within 30 days from the date of the denial. However, it is noted that the applicant's response to the district director's request for evidence was received at the San Jose office on May 7, 2004, subsequent to the decision of the district director. The applicant submitted a criminal record background check from the Department of Justice, Bureau of Criminal Identification and Information, Sacramento, California, indicating that no criminal record was located in the files of the California Department of Justice based on the name, date of birth, and Social Security number submitted on the fingerprint card. It is also noted that the Federal Bureau of Investigation (FBI) fingerprint results report dated May 1, 2006, does not indicate that the applicant had been arrested for DUI, or for any other criminal arrest.

Based on the FBI fingerprint results report, the letter from the Bureau of Criminal Identification and Information, the absence of an NCIC printout report, and the statement from the interviewing officer that it appears the printout did not relate to the applicant, the applicant does not have a criminal record that would bar him from receiving TPS. Even if the applicant was, in fact, convicted of a DUI, that one misdemeanor offense would not render him ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act. Additionally, the applicant has furnished additional evidence to establish continuous residence from May 5, 2003 to October 2003. That evidence, in conjunction with other evidence included in the record of proceeding, is sufficient to establish that the applicant has met the continuous residence and continuous physical presence requirements described in 8 C.F.R. § 244.2(a) and (b). The applicant has, therefore, overcome the grounds for the denial of his initial application for TPS.

A review of the record, however, contains Form I-213, Record of Deportable Alien, indicating that on January 3, 1993, the applicant was apprehended by the United States Border Patrol, subsequent to his entry into the United States without inspection, one mile west of the San Ysidro, California, Port of Entry. He stated to the officers that he is a citizen of Honduras, and that he left his home on December 10, 1992, traveling via bus, passing through El Salvador, Guatemala, and into Mexico without a valid passport or visa. He continued his

travel through Mexico, arriving at Tijuana, Mexico, on January 2, 1993, from where he entered the United States on January 3, 1993. In removal proceedings held on July 6, 1993, in San Diego, California, the applicant (name used: [REDACTED], file number [REDACTED]) was not present at the hearing; therefore, the immigration judge ordered the applicant deported *in absentia* to Honduras, his stated country of birth. A Warrant of Deportation, Form I-205 was issued on July 27, 1993.

The applicant filed an Application for Asylum and for Withholding of Deportation, Form I-589, on February 6, 1995. That application was granted on April 8, 1996. Because it was later discovered that the applicant had an outstanding order of deportation, making him ineligible for asylum benefits, the grant of asylum was terminated by the San Francisco Asylum office on October 28, 1998. Also, the Application to Register Permanent Residence or Adjust Status, Form I-485, filed on April 10, 1997, based on the applicant's asylum status, was denied by the Acting District Director, San Francisco, California, on May 7, 1999. The district director, in his denial of the Form I-485, maintained that a refugee number, under section 207(a) of the Act, had never been allocated to the applicant as he had not been granted asylum or refugee status, and that he was no longer classified as an asylee under section 208 of the Act since that status was terminated on October 28, 1998, and that the applicant had "perpetrated fraud upon the United States by your actions and you therefore are inadmissible to the United States under section 212(a)(6)(C)(i)."

Pursuant to 8 C.F.R. § 244.3(b), Citizenship and Immigration Services may waive inadmissibility under the provisions 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 that may be waived, he or she shall be advised of the procedures for applying for a waiver of grounds of inadmissibility on Form I-601. Here, the applicant was found inadmissible under section 212(a)(6)(c)(i) of the Act by the San Francisco district director.

Therefore, the case will be remanded. The CSC director shall provide the applicant with the opportunity to file a Form I-601 waiver, and shall fully adjudicate the Form I-601 and the Form I-821. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS. An adverse decision on the waiver application may be appealed to the AAO.

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.

Additionally, it is noted that although the record of proceeding contains an El Salvadoran birth certificate and English translation, the certificate was not accompanied by photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1).

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.