

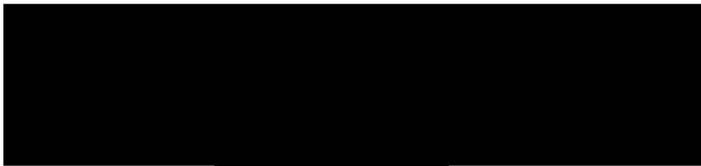


**U.S. Citizenship
and Immigration
Services**

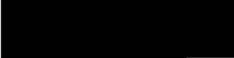
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **JUN 30 2008**

[WAC 05 134 72095 as it pertains to
[SRC 02 236 53293]

INRE:

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 Director, California 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 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 applicant filed an initial application for TPS under receipt number SRC 02 236 53293. The director denied the initial application on October 25, 2004, after determining that the applicant had failed to submit requested court documentation relating to his criminal record. However, the record reveals that the applicant was not the individual arrested for the identified crimes. CIS records, specifically the applicant's FD-258, Fingerprint Card, list the applicant's height as 5'-07" and weight as 170 pounds. The applicant's passport also lists his height as 5'-07". However, the Federal Bureau of Investigation (FBI) fingerprint results report lists the arrested individual's height as 5'-03" and weight of 130 pounds. It is also noted that a Maryland Criminal History Report identifies the individual as " lists him as 5'-06" tall weighing 145 pounds and indicates he has a tattoo on his right hand. There is nothing in the record to indicate the applicant had a similar tattoo. The FBI report also rth dates than the applicant's and identifies the applicant as with aliases of and

The director's denial of the initial application will be withdrawn; the application will be remanded for a new decision. The director's denial of the application for re-registration or renewal is dependent upon the adjudication of the initial application. Since the denial of the initial application is being withdrawn, this 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 Salvadorans.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by Citizenship and Immigration Services (CIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The record shows that on January 30, 1996, an immigration judge granted the applicant voluntary departure until June 12, 2003, with an alternate order of removal if he should fail to depart as required. The record of proceeding reflects that on September 1, 1996, an immigration judge ordered the applicant removed from the United States to El Salvador. A Warrant of Removal/Deportation, Form I-205, was issued on September 13, 1996, based on the applicant's failure to depart from the United States. The applicant failed to appear at the Atlanta district office on October 16, 1996, for his enforced departure.

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.