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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

MAR 01 2004

FILE: [redacted] Office: SAN FRANCISCO Date:

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]

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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.

Cindy N. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the San Francisco District Office for further consideration and action.

The applicant is a native and citizen of Honduras who indicated on his application that he entered the United States without a lawful admission or parole in July 1995. The District Director determined that the applicant had been deported on September 8, 1995, and had reentered the United States within five years without authorization. The District Director concluded that the applicant was ineligible under section 241(a)(5) of the Act and denied the application for Temporary Protected Status (TPS).

The provisions of the TPS program do not prevent eligibility if an individual was previously removed (deported) from the United States under section 241(a)(1)(B) [now section 237] of the Act. It does appear that the applicant is inadmissible under section 212(a)(9) of the Act; however, under 8 C.F.R. § 244.3(b), a waiver may be available to the applicant if he submits the proper Form I-601, Application for Waiver of Grounds of Excludability, and if that waiver is granted. The record does not contain an approved Form I-601.

Therefore, the case will be remanded and the director shall fully adjudicate the application. The District Director shall allow the applicant the opportunity to submit the Form I-601 and shall also allow the applicant to submit sufficient evidence to otherwise establish eligibility. The District Director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS offered to Hondurans. 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 director's decision is withdrawn. The case is remanded to the District Director for further action in accordance with the foregoing and for entry of a new decision, which, if adverse to the applicant, is to be certified to the Director of the Administrative Appeals Office for review.