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U.S. Citizenship
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FILE:



Office: Nebraska Service Center

Date: JUL 20 2006

[WAC 01 185 51285]

IN RE:

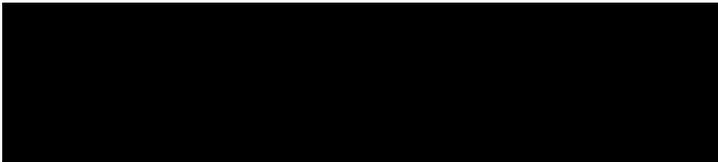
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied, reopened, and denied again by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded.

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.

The director denied the application because the applicant failed to establish his date of entry into the United States as of February 13, 2001.

On March 23, 2004, the applicant was requested to submit evidence to establish his “date of entry since February 13, 2001”, his “residence in the United States since February 13, 2001”, and his continuous physical presence in the United States from March 9, 2001. The applicant was also requested to submit a check or money order for the fingerprint fee. In response, the applicant submitted some evidence in an attempt to establish his continuous residence and continuous physical presence in the United States. The director determined that the applicant had failed to submit sufficient evidence to establish his “date of entry into the United States on or just prior to February 13, 2001.” Therefore, the director denied the application on September 8, 2004. Additionally, the director stated in the decision to deny that the applicant had provided “evidence of their continuous residence and continuous physical presence, as well as the fingerprint fee of \$50.00.”

On appeal, the applicant’s representative states that the applicant was not able to provide copies of his visa and Form I-94, Departure Record, in response to the director’s March 23, 2004, request. The applicant, along with his appeal, provides copies of two B1/B2 non-immigrant visas from his El Salvadoran passport and a copy of his Form I-94, Departure Record, reflecting that he was admitted to the United States on November 21, 1999, as a B-2, non-immigrant visitor, at New York.

The director’s decision to deny the application was based solely on the applicant’s failure to establish his “date of entry into the United States.” However, “date of entry” is not a requirement for eligibility for TPS as set forth in the Act or the Regulations. Therefore, the director’s decision will be withdrawn.

A review of the evidence submitted on appeal reflects that the applicant was admitted to the United States on November 21, 1999, more than 14 months prior to the requisite time period for El Salvadoran TPS. However, a review of the record reflects a significant gap in the submitted evidence of physical presence and residence between July 25, 2000, and the date the applicant filed his TPS application on April 12, 2001. The director erred in stating that the applicant had provided sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States.

Therefore, the case will be remanded and the director shall consider the applicant’s response in the issuance of a new decision.

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 and the case is remanded to the director for entry of a new decision.