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

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FEB 28 2007

FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE:

[WAC 06 081 70015]

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 "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The case will be remanded to the director for further action.

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 applicant filed the current Form I-821, Application for Temporary Protected Status, on December 20, 2005, and indicated that this is his "first application to register for Temporary Protected Status (TPS)." In a Notice of Intent to Deny (NOID) dated February 5, 2006, the applicant was requested to submit evidence to establish: (1) that he was eligible for late registration; (2) nationality and identity; and (3) continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application. On March 1, 2006, counsel responded to the director's NOID and submitted additional evidence. On April 12, 2006, the director treated the initial application as a re-registration application and denied this application after determining that the applicant was ineligible for re-registration because the applicant's initial TPS application was denied on January 12, 2006. On May 12, 2006, counsel filed Form I-290B, Notice of Appeal to the Administrative Appeals Office, appealing the director's decision of April 12, 2006, and submits a brief and additional evidence.

The record of proceeding is devoid of evidence that the applicant's initial TPS application was denied on January 12, 2006, as determined by the director. The director issued a NOID on February 5, 2006, and the applicant responded to the NOID. The record does not contain the director's notice of denial issued based on the NOID, nor does it contain the director's notice of denial dated January 12, 2006, prior to the issuance of the NOID.

Therefore, the director's decision to deny the application will be withdrawn, and the application will be remanded for a new decision. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS offered to 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 case is remanded to the director for further action consistent with the above.