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

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JAN 19 2007

[WAC 01 195 50400]
[WAC 02 283 52323]
[WAC 04 133 52327]

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:

SELF-REPRESENTED

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 cursive script, 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 (AAO) on appeal. The decision of the director will be withdrawn, and the matter will be remanded for further consideration and action.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 his initial Form I-821, Application for Temporary Protected Status, with the California Service Center on May 26, 2001 under receipt number WAC 01 195 50400. The applicant subsequently filed a second Form I-821 with the California Service Center on September 12, 2002 under receipt number WAC 02 283 52323.

The record revealed that the applicant was previously removed from the United States to El Salvador on January 8, 1987. He was subsequently apprehended by the United States Border Patrol near El Centro, California, on June 8, 1999, and near San Ysidro, California, on November 2, 1999, when he attempted to enter the United States using a Form I-551, Alien Registration Card, issued to another individual, [REDACTED]. The applicant was found to be inadmissible to the United States under 8 U.S.C. § 1325 for attempted illegal entry into the United States, and also under 18 U.S.C. § 1544 as an impostor. The applicant was expeditiously removed from the United States.

The director denied both TPS applications on March 9, 2004, because the applicant was inadmissible to the United States under 18 U.S.C. § 1544 as an impostor and had not filed a Form I-601, Application for Waiver of Grounds of Excludability. The director stated in the denial decision, “[t]he applicant may submit a Form I-601, Application for Waiver of Grounds of Excludability with fee (\$170.00), if the applicant believes he or she is eligible for such waiver.”

On appeal, the applicant states that he was apprehended by the United States Border Patrol when he applied for admission to the United States at San Ysidro, California using “another identity” in 1999, and was expeditiously deported to Mexico. The applicant claims that he re-entered the United States without inspection after his removal to Mexico in 1999.

Pursuant to 8 C.F.R. § 244.3(a), an alien’s inadmissibility to the United States under 18 U.S.C. § 1544 as an impostor shall not render an alien ineligible for TPS.

Pursuant to 8 C.F.R. § 244.3(b), Citizenship and Immigration Services (CIS) 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, Application for Waiver of Grounds of Excludability.

On April 5, 2004, the applicant filed a Form I-601 with the California Service Center under receipt number WAC 04 133 52327. The Director of the California Service Center denied the application on November 4, 2004. The director stated in the denial decision:

. . . USCIS Form I-601 should be filed with the director or immigration judge considering

your application for adjustment of status or with the consular office considering your visa application. A search of USCIS automated records revealed that you do not currently have an application for adjustment of status to that of legal permanent resident. Therefore, your application, filed with the California Service Center, must be and is hereby denied. This decision may not be appealed.

The director improperly denied the waiver application based on a finding that the applicant did not have a pending application for adjustment of status before the California Service Center or a pending immigrant visa application before a United States consulate or embassy abroad. The applicant filed the Form I-601 waiver application in conjunction with his initial TPS application, which the director denied because he found the applicant was inadmissible to the United States and had not filed an application for waiver of grounds of inadmissibility. Therefore, the director's decisions to deny the applicant's TPS application and his waiver application will be withdrawn. The director shall fully adjudicate the Form I-601 and the applicant's initial TPS application and shall issue new decisions.

It is noted that the applicant may be inadmissible to the United States under section 212(a)(9)(A)(i) of the Act as an alien who reentered the United States within five (5) years of removal. Finally, it is noted that the record of proceeding, as it is presently constituted, does not contain sufficient evidence to establish the applicant's identity and nationality, his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

Accordingly, the matter is remanded for action consistent with the foregoing. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS. 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 decisions are withdrawn. The matter is remanded for further consideration and action.