

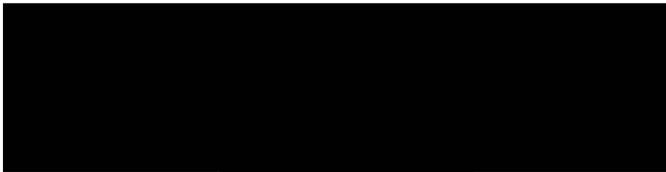


U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: California Service Center Date: MAY 16 2008
[WAC 05210 82525]

INRE: 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:



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.

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 case will be remanded for further 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 record reveals that the applicant filed a TPS application during the initial registration period under CIS receipt number WAC 01 198 53935. The director denied this application on September 19, 2005, because the applicant was not eligible for annual re-registration.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

In this case, the applicant's initial application was reopened and approved on September 27, 2006, and he is thus eligible to re-register annually. The director's decision was in error and will be withdrawn. However, the record also indicates that certain factual assertions by the applicant may be misrepresentations. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.c. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991)*. The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)*.

The case will be remanded for the service center to issue a request for information which refutes or verifies certain allegations contained in the record; specifically, the applicant's identity, nationality, and criminal record. As always, the applicant bears the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act.

ORDER: The appeal will be remanded for further investigation.