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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUN 12 2006

[WAC 05 243 72810]

IN RE:

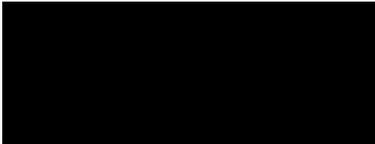
Applicant:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, (CSC), and is now before the Administrative Appeals Office 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 record reveals that the applicant filed a Form I-821, Application for Temporary Protected Status, after the initial registration period under Citizenship and Immigration Services (CIS) [receipt number LIN 03 014 51320.] The director denied that application on February 25, 2003, after determining that the applicant had abandoned his application by failing to respond to a request for evidence.

The applicant filed the current application, on May 31, 2005, and indicated that this was his first application to register for TPS and that he was filing for late registration.

The director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On December 27, 2002, prior to the denial of his initial TPS application for abandonment, the Director, Nebraska Service Center, (NSC), sent the applicant a Notice of Intent to Withdraw, (NIW), the approval of his TPS. However, the record contains no evidence showing that his initial application had ever been approved. The NIW informed the applicant that the approval of his TPS would be withdrawn unless he submitted additional evidence to show that he was eligible including evidence of continuous physical presence and continuous residence and appropriate photo identification. In this case, the NSC director erred by citing the December 27, 2002, determination as a Notice of Intent to Deny and not as a NIW and then by not explaining why the evidence of continuous physical presence and continuous residence and the photo identification that the applicant had submitted for the record was insufficient.

As the NSC decisions were erroneously issued, the applicant is still eligible to have his application for late initial registration considered. Additionally, as the applicant was not applying for re-registration but for late initial registration as the spouse of an alien currently eligible to be a TPS registrant, the sole reason stated by the CSC director has been overcome.

An alien applying for temporary protected status has 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 denial of the initial application [LIN 03 014 51320], is withdrawn. The case is remanded to the director for the entry of a new initial eligibility determination.