

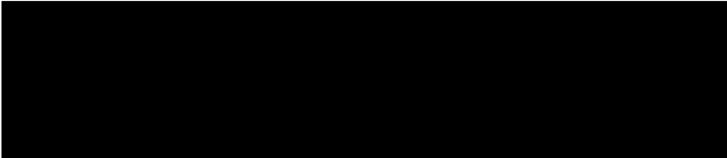
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U.S. Citizenship  
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Services

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MN



FILE:



OFFICE: California Service Center

DATE:

FEB 15 2007

[WAC 01 225 53509]

[WAC 05 249 72538]

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 applications were denied by the Director, California Service Center. They are now on appeal before the Administrative Appeals Office (AAO). The matter will be remanded to the director for further action on both applications.

The applicant is 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 shows that the applicant filed an initial Form I-821, Application for Temporary Protected Status [WAC 01 225 53509], on May 14, 2001. The application was denied by the director on September 16, 2003, on the ground that the applicant was ineligible for TPS under section 244 of the Act. According to the director, the record revealed that the applicant had made a false claim of U.S. citizenship, making him inadmissible to the United States under section 212(a)(6)(C)(ii) of the Act without a waiver of the ground of inadmissibility, which had not been requested by the applicant.<sup>1</sup>

On appeal the applicant asserted that he never violated section 212(a)(6)(C)(ii) of the Act because he never falsely claimed to be a citizen of the United States. The applicant acknowledged that he was charged with violating section 472 of the California Penal Code – “Forgery or counterfeiting of seals; possession and concealment of counterfeited seal” – when he presented a false driver’s license during a traffic stop. The applicant submitted a copy of the final court disposition of this charge which indicates that he was arrested in Los Angeles County on April 28, 2000, pleaded nolo contendere on May 9, 2000 to one count of forging an official seal, a misdemeanor under section 472 of the Penal Code, and was sentenced to 36 months of summary probation, five days in jail, 80 hours of community service, and a fine of \$100.00. Since he did not violate section 212(a)(6)(C)(ii) of the Act, the applicant contends that he is not statutorily inadmissible to the United States and is eligible for TPS.

Without the AAO having issued a decision on the appeal filed in regard to the initial TPS application [WAC 01 225 53509], the applicant filed another Form I-821 on June 6, 2005 [WAC 05 249 72538], indicating that it was a re-registration application. An applicant for re-registration must have a previous grant of TPS, as only those individuals who are granted TPS must register annually. In addition, a re-registration applicant must continue to maintain the conditions of eligibility. See 8 C.F.R. § 244.17. The director denied the re-registration application on September 2, 2005, on the ground that the initial TPS application had been denied and the applicant was therefore ineligible for re-registration under section 244 of the Act.

The applicant filed another appeal, reiterating his position that that the initial application had been erroneously denied in 2003, pointing out that no decision has yet been issued on that appeal, and stating that the current application for re-registration was filed to preserve his TPS eligibility pending the outcome of the original appeal. The applicant contends that the director’s denial of the initial TPS application provided no details about his reputed false claim of U.S. citizenship and gave the applicant no informational basis on which to rebut the charge.

The AAO agrees with the applicant that the director did not explain the basis of his finding in the original decision that the applicant had made a false claim of U.S. citizenship, in violation of section 212(a)(6)(C)(ii) of the Act, making him statutorily inadmissible to the United States. Therefore, the case will be remanded for the

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<sup>1</sup> The director was referring to an Application for Waiver of Grounds of Excludability (Form I-601)

director to reconsider the evidence, solicit additional evidence if he deems it necessary, and issue a new decision fully explaining the factual and legal basis for granting or denying the initial application for TPS.

Since the decision on the re-registration application hinges on the disposition of the initial application, the case must also be remanded for the director to determine whether a change is warranted in the decision rendered on the applicant's re-registration application [WAC 05 249 72538].

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. The director shall issue a new decision on the initial application [WAC 01 225 53509] and reconsider the decision on the re-registration application [WAC 05 249 72538] in light of the new decision on the initial application.