



U.S. Citizenship  
and Immigration  
Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE:

JAN 17 2007

[WAC 05 153 75731]

[WAC 01 174 52239]

IN RE:

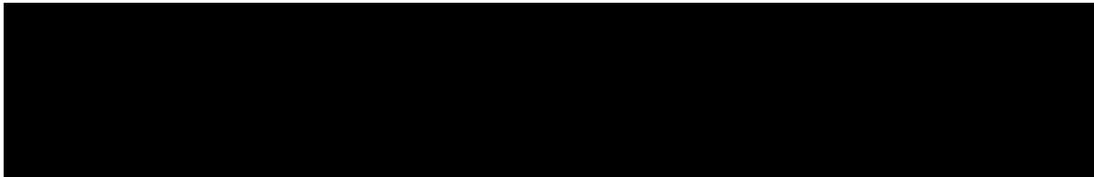
Applicant:



APPLICATION:

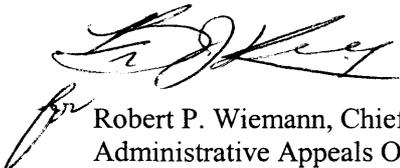
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.

  
for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The initial application was denied by the Director, California Service Center. A subsequent application for re-registration was denied by the Director, California Service Center, and is currently before the Administrative Appeals Office on appeal. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office, and the case 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 record indicates that the applicant filed a TPS application during the initial registration period on April 9, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 174 52239. The director denied that application on October 27, 2004, because the applicant had failed to submit the final court dispositions of all of his arrests as had been requested on September 22, 2004. The director, however, erroneously advised the applicant that: "The denial of this application may not be appealed. However, the applicant may submit another application within ninety (90) days from the date of this notice if he feels that the grounds for the denial have been overcome."

Regulations at 8 C.F.R. § 244.10(c) states, in part:

The decision of the director to deny Temporary Protected Status, a waiver of grounds of inadmissibility, or temporary treatment benefits shall be in writing served in person or by mail to the alien's most recent address provided to the Service and shall state the reason(s) for the denial. Except as otherwise provided in this section, the alien shall be given written notice of his or her right to appeal a decision denying Temporary Protected Status.

The record indicates that the applicant responded by filing Form I-821 (WAC 05 153 75731) and indicated that he was re-registering for TPS. He submitted court documents relating to his arrest on January 4, 2004, in Los Angeles, California, for "theft." The director denied the re-registration application on May 11, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, counsel asserts that CIS erroneously denied the applicant's TPS application as the evidence clearly establishes that the applicant did timely file a new application with required evidence overcoming the initial denial. Counsel resubmits a copy of a letter dated November 17, 2004, from the Office of the City Attorney, Los Angeles, California, indicating that the applicant was:

[A]rrested and received into custody by officers of the Los Angeles Police Department for violation of California Penal Code section 484a (petty theft), on January 1, 2004.

Thereafter, the matter was presented to this office for filing consideration. On January 15, 2004, the matter was reviewed and rejected as to the filing of any criminal charges, and set for our APPS Program (City Attorney's Alternate Prosecution Program).

This letter is proof that [REDACTED] successfully completed this program on July 2, 2004. No further action is required, and a final decision was made that no criminal charge will be filed.

Counsel also resubmits a copy of a Certificate of Release from the Los Angeles Police Department certifying that, as required by the provisions of the Penal Code § 851.6, the taking into custody of the applicant on

January 4, 2004, "was a detention only and not an arrest. The subject was released on 4-22-04 pursuant to the provisions of Penal Code section 849." Also submitted is a copy of a letter from the American Justice Associates dated November 5, 2004, indicating that the applicant had successfully completed the Alternative Prosecution Program (an alternative to criminal prosecution for entry level misdemeanor offenses) on July 2, 2004. The record, in this case, shows that the applicant was not convicted of the misdemeanor offense of theft.

The director's denial of the initial application will be withdrawn, and the application will be remanded for a new decision and to give the applicant notice of his right to appeal the decision.

The Director, California Service Center's denial of the application for re-registration or renewal is dependent upon the adjudication of the initial application. Since the initial application is being remanded, that decision will be remanded to the director for further adjudication. 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 initial application is reopened, the director's decision is withdrawn, and the application is remanded for a new decision. The re-registration application is remanded for further action consistent with the director's new decision on the initial application.