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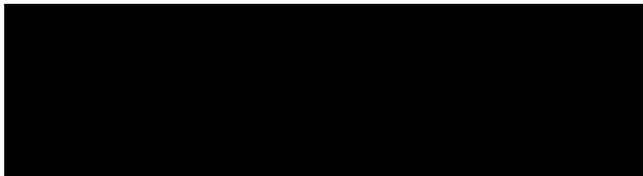


FILE: [REDACTED] OFFICE: California Service Center DATE: MAY 29 2007
[WAC 05 210 83422 –
as it relates to
SRC 02 036 57638]

IN RE: Applicant: [REDACTED]

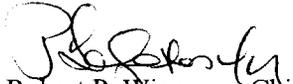
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

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 Director, California Service Center (CSC), denied the application for re-registration of Temporary Protected Status. The application is now on appeal before the Administrative Appeals Office (AAO). The director's decision will be withdrawn. The matter will be remanded to the director, in conjunction with the applicant's initial application for Temporary Protected Status, for the entry of a decision on the initial application and the entry of a new decision on the re-registration application.

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, at the Texas Service Center (SRC 02 236 57638) on October 17, 2001, during the initial registration period for El Salvadoran nationals. The application was subsequently transferred to District Office in Houston, Texas. On October 27, 2003, the Houston District Office sent the applicant a "Notice of Intent to Deny TPS, Form I-821," giving the applicant 30 days to submit the following evidence: "Photo ID, i.e., a copy of your driver license, ID card, or passport." The applicant apparently did not respond to the notice. According to Citizenship and Immigration Services (CIS) records, on December 1, 2003, the Houston District Office denied the application, then reopened it on service motion. No further action appears to have been taken on the initial application.

On October 18, 2004, the San Antonio Office issued a warrant of removal.

On February 27, 2005, the applicant filed a second Form I-821 with the California Service Center (WAC 05 210 83422), which he identified as an application to re-register for TPS. On March 20, 2006, the CSC sent the applicant a Notice of Intent to Withdraw, in which it advised the applicant of CIS records indicating that he had been arrested on May 5, 2004, on a charge of theft of property under \$300 in value, and that one felony conviction or two or more misdemeanor convictions in the United States would make him ineligible for TPS under section 244(c)(2)(B)(i) of the Act, in which case "your TPS will be withdrawn." The applicant was requested to submit evidence of the final court disposition(s) of this and all other arrests. The applicant responded by submitting a "Certification of Criminal History Record Information" from the Texas Department of Public Safety, dated April 13, 2006, which certifies that there was no criminal record on file for the applicant in the State of Texas based on his fingerprints.

The CSC also sent the applicant a Notice of Intent to Deny on May 9, 2006, requesting the submission of evidence to establish his identity and El Salvadoran nationality, his date of entry into the United States, as well as his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001, as required for TPS applicants from El Salvador. The applicant responded with some additional documentation on June 12, 2006. In a Notice of Decision issued on August 10, 2006, the Director, CSC, denied the application on the ground that insufficient evidence had been submitted to establish the applicant's nationality/identity.¹

¹ The AAO notes that the record at the time of the director's decision included photocopies of two passports issued to the applicant by the El Salvadoran Consul General in Houston, Texas, in November 1998 and April 2005, respectively.

As the record indicates that no decision has been rendered on the initial TPS application, however, there was no legal basis for the Director, CSC, to decide on the subsequent application for re-registration. A decision on the re-registration application is dependent upon the adjudication of the initial application. Accordingly, the director's denial of the re-registration application will be withdrawn, and a new decision shall be rendered once a decision is issued on the initial application.

The case will be remanded to the Director, CSC, for the entry of a decision on the initial TPS application (SRC 02 036 57638) and the entry of a new decision on the re-registration application (WAC 05 210 83422).

As always in these proceedings, the burden of proof rests solely with the applicant. *See* 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 enter a decision on the initial application and a new decision on the re-registration application.