

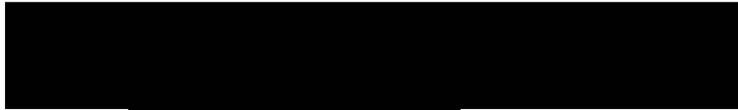
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED]
[EAC 04 01851121]

Office: VERMONT SERVICE CENTER

Date **APR 28 2008**

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: Self-represented

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

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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, Vermont Service Center, 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 director determined that the applicant failed to establish he: 1) had continuously resided in the United States since February 13, 2001; 2) had been continuously physically present in the United States since March 9, 2001; and 3) was eligible for late registration. The director also found that the applicant failed to provide an explanation regarding his having indicated that he has a communicable disease of public health significance. The director, therefore, denied the application.

On appeal, the applicant states that he cannot work without TPS and he has an obligation to pay child support. The applicant also submits a Medical Clearance Form indicating that he is IDV-Positive.

According to section 212(a)(6) of the Act, applicants who are infected with a dangerous contagious disease are excludable. Human immunodeficiency virus (HIV) is defined as such a dangerous contagious disease. 42 C.F.R. 34.2(b)(4). However, applicants infected with HIV may, in certain instances, have such excludability waived.

Pursuant to 8 C.F.R. 245a.3(d)(4), an applicant who is excludable under section 212(a)(6), due to HIV infection, must demonstrate the following three conditions will be met if a waiver is granted and he is granted adjustment of status from temporary to permanent residence:

- (1) the danger to the public health of the United States created by the alien's admission is minimal; and
- (2) the possibility of the spread of the infection created by the applicant's admission is minimal; and
- (3) there will be no cost incurred by any government agency without prior consent of that agency.

If the applicant meets these criteria, the Attorney General may waive such excludability in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Section 245A(d)(2)(B)(i) of the Act.

In this case, the director has not advised the applicant that he is excludable, or that such excludability may be waived.

The case will be remanded and the director shall provide a copy of the Form I-690, Application for Waiver of Excludability. The applicant may also submit documentary evidence in support of the waiver application.

It is noted that the applicant has failed to establish he has continuously resided in the United States since February 13, 2001 and has been continuously physically present in the United States since March 9, 2001, and is eligible for late registration.

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 director's decision is withdrawn. The case is remanded for further action.