



U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy**

M1

[REDACTED]

FILE:

Office: TEXAS SERVICE CENTER Date: JAN 03 2008

[SRC 01 178 56522]

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:

[REDACTED]

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.

Handwritten signature of Robert P. Wiemann in black ink.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for further 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 director determined that the applicant was ineligible for TPS because he failed to submit a certified copy of the final court disposition of his arrest on November 4, 1990, in Hyattsville, Maryland, for "Concealed Deadly Weapon." The director, therefore, denied the application.

On appeal, the applicant states that he came to the United States on January 16, 1997, and he was arrested on that date while crossing into Laredo, Texas. He claims that he lived in Texas since that time, and he has never been in Hyattsville, Maryland.

Pursuant to section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

The record of proceeding contains two Federal Bureau of Investigation (FBI) fingerprint results reports reflecting two different result reports with two different, but similar names. The FBI cover sheets show the same file number [REDACTED]; however, they both show different FBI report numbers, different dates of birth, and different Social Security numbers. Further, it is noted that page 2 of one FBI report listed file number [REDACTED] (relating to this applicant), and page 2 of another FBI report listed file number [REDACTED] (not relating to this applicant).

File number [REDACTED] was subsequently reviewed, and information contained in this file was compared with the information contained in the applicant's record. Based on this review, it appears that the FBI report containing the November 4, 1990, arrest information relates to the alien with file # [REDACTED] rather than to the applicant. Therefore, the applicant has overcome the director's sole reason for denial of the application and the decision of the director will be withdrawn.

However, the evidence contained in the record of proceeding is insufficient to establish the applicant's qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). It is noted that the only documents furnished by the applicant to establish that he met these criteria during the qualifying period are: (1) a copy of his State of Texas Identification Card expiring on May 11, 2002; (2) a copy of only the biographical page of his El Salvadorian passport issued at Dallas, Texas, with no date of issuance indicated; and (3) a copy of an auto insurance receipt dated October 16, 2000.

Therefore, the case will be remanded so that the director may request any additional evidence that she considers pertinent. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

It is noted that the record of proceeding contains a Warrant of Removal/Deportation, Form I-205, issued on August 20, 1997 (File [REDACTED]), based upon a final order of removal by an Immigration Judge on July 7, 1997. The applicant failed to appear at the Port Isabel Service Processing Center, Los Fresnos, Texas, on September 22, 1997, for his enforced departure.

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 consistent with the above and entry of a new decision.



U.S. Citizenship  
and Immigration  
Services

Date: JAN 03 2008

MEMORANDUM

From: [REDACTED] Adjudications Officer  
Administrative Appeals Office

A handwritten signature in black ink, appearing to be "J. Miller", written over the typed name of the Adjudications Officer.

To: Texas Service Center

Re: [REDACTED] (#1)  
[REDACTED] (#2)

NOTE: COPY PLACED IN EACH RECORD

The case is being returned to the Service Center for further review. This case involves two different individuals with two different, but similar names and sharing the same files. Fingerprints and photographs of the two individuals are different. The Federal Bureau of Investigation (FBI) fingerprint results report also reflects two different result reports with two different, but similar names. The FBI cover sheets show the same file number [REDACTED] however, the two reports bear different FBI report numbers, different dates of birth, and different Social Security numbers. Further, it is noted that page 2 of one FBI report listed file number [REDACTED] (relating to applicant #1), and page 2 of another FBI report listed file number [REDACTED] (relating to applicant #2).

[REDACTED] and [REDACTED] (Applicant #1):

It appears that the FBI number for applicant #1 is [REDACTED]

File [REDACTED] relating to applicant #1, contains the biographic page of his El Salvadoran "Cedula" showing his date of birth as May 11, 1974, and his El Salvadoran birth certificate indicating he was born on May 11, 1974, his mother's name is Doral Elsy Berrios, and his father's name is [REDACTED]

File [REDACTED] also relating to applicant #1, shows that he was apprehended on January 16, 1997, while attempting to enter the United States without inspection near Laredo, Texas, and that an Order to Show Cause and Notice of Hearing, Form I-221 was issued. At that time he claimed that he was born on June 27, 1979 (a minor). He was released to his uncle upon the posting of a bond. On July 7, 1997, the applicant was ordered removed "in absentia," and a Warrant of Removal/Deportation, Form I-205, was issued. The file further

shows that the bond was breached based on the applicant's failure to appear at the Port Isabel Service Processing Center on September 22, 1997, for his enforced departure.

[REDACTED] (Applicant #2):

It appears that the FBI number for applicant #2 is [REDACTED] FBI report number [REDACTED] shows that this individual was arrested in Hyattsville, Maryland, on November 4, 1990, for "concealed deadly weapon."

File [REDACTED] relating to [REDACTED] (#2), contains an El Salvadoran "Cedula" issued on March 24, 1987, indicating he was born on January 17, 1968, and that his mother's name is [REDACTED] and his father's name is [REDACTED]. There is no birth certificate in this file. This file shows that applicant #2 was apprehended on November 4, 1988, while attempting to enter the United States without inspection near Brownsville, Texas, and that an Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien, Form I-221S, was issued.

Temporary file [REDACTED] was subsequently received at the AAO. This T file (file [REDACTED] belonging to applicant #1) contains most recent information relating to applicant #2. The T file shows that applicant #2 was apprehended while attempting to enter the United States without inspection near Hidalgo, Texas, on April 20, 2005. The information regarding removal proceedings pertaining to applicant #1 was detailed on Form I-831 and used against applicant #2. Based on a prior order of deportation entered on July 7, 1997 (this pertains to applicant #1), a Notice of Intent/Decision to Reinstate Prior Order (Form I-871) and a Warrant of Removal/Deportation (Form I-205) were issued on April 21, 2005, and applicant #2 was removed from the United States on May 23, 2005 at Houston, Texas. The fingerprints and photographs contained in [REDACTED] were compared and they match the fingerprints and photographs contained in [REDACTED].