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U.S. Citizenship
and Immigration
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: NOV 28 2008

[WAC 06 011 50219, *appeal*]

[WAC 05 224 82476]

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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to Vermont Service Center. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC), and is now before the Administrative Appeals Office on appeal. The case will be remanded to the Director, Vermont Service Center.

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 applicant filed an initial Form I-821, Application for Temporary Protected Status, under receipt number WAC 05 224 82476 after the initial registration period had closed. On September 16, 2005, the CSC Director denied the application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

In his denial, the CSC Director stated that the applicant's initial TPS application was denied on May 5, 2004, and therefore, the applicant was not eligible to re-register for TPS. However, the record does not reflect that the applicant filed another Form I-821 prior to the current application. Therefore, the CSC Director's decision is withdrawn because it was in error as the applicant's initial application under consideration had yet to be adjudicated.

Although not addressed by the CSC Director, the applicant's Federal Bureau of Investigation fingerprint results report reflects the applicant was arrested by the Aurora Police Department in Colorado, on February 24, 2004, and charged with two counts of shoplifting, both misdemeanors, and fraudulent impersonation, a felony. The applicant shall be requested to provide final court disposition(s) for these charges

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 Vermont Service Center Director for the entry of a new decision.