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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

Office: CHARLOTTE

consolidated therein

APR 01 2010

[EAC 01 161 55396]

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 Vermont Service Center. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the District Director, Charlotte, North Carolina, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the Vermont Service Center for further consideration and action.

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 reveals that the applicant filed a TPS application on October 25, 2007, under receipt number EAC 08 025 81129. The Director, Vermont Service Center, approved that application on December 17, 2007.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8.C.F.R. § 244.14(a)(1). There is no evidence that the applicant was not eligible for TPS. The director may withdraw the status of an alien granted TPS if it is determined that the applicant has failed to re-register annually. The applicant has re-registered for each subsequent registration period since he initially applied for TPS. The director may withdraw the status of an alien granted Temporary Protected Status if the applicant had failed to submit evidence necessary for the proper adjudication of the application. The applicant has provided all of the requested evidence. The director may withdraw the status of an alien granted Temporary Protected Status if the applicant has been convicted of a felony or two misdemeanors. There is no record of any arrests and/or convictions for the applicant. The director may withdraw the status of an alien granted Temporary Protected Status if the applicant fails to maintain continuous residence and continuous physical presence in the United States during the qualifying periods. The applicant claims that he never left the United States and there is no evidence in the record that the applicant ever left the United States since his arrival here in 1994.

The district director withdrew temporary protected status because he determined that the applicant was inadmissible for failure to attend or remain in attendance at a proceeding to determine his inadmissibility or deportability and that he sought admission to the United States within 5 years of his subsequent departure or removal.

On appeal, the applicant claims that he was placed in deportation or exclusion proceedings before April 1, 1997, but that he never departed the United States and therefore should not be considered inadmissible. The applicant was placed in proceedings on September 28, 1994, and United States Citizenship and Immigration Services (USCIS) records indicate that the applicant did not report to the New York District Office, as scheduled, on December 3, 1996 for his scheduled deportation to El Salvador. The record does not reflect that the applicant was deported. Therefore, the applicant is not inadmissible to the United States based on a previous deportation and return to the United States within 5 years of his subsequent departure or removal. Consequently, the only basis for the director's decision is withdrawn.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by United States Citizenship and Immigration Services (USCIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b). The applicant has met this burden. The record does not reflect any grounds that would bar the applicant from receiving TPS. There are no other known grounds of ineligibility; consequently, the director's decision will be withdrawn. However, the validity period of the applicant's fingerprint check has expired.

Accordingly, the case is remanded for the purpose of sending the applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements. Thereafter, the director will render a new decision. Should the decision be adverse, the director must give written notice setting forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i), and the applicant shall be permitted to file an appeal without fee.

ORDER: The case is remanded for appropriate action and decision consistent with the foregoing.