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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: California Service Center

Date: MAY 29 2007

[WAC 05 208 86086 as it relates to
SRC 01 228 71330]

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. A subsequent application for re-registration was denied by the Director, California Service Center, and is currently before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office, and the case will be remanded for further consideration and action.

The applicant is stated to be 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 an initial TPS application on June 1, 2001, under CIS receipt number SRC 01 228 71330. The director initially denied the application on April 2, 2003, because the applicant failed to respond to a January 23, 2003 request to submit evidence to establish his continuous residence and continuous physical presence during the requisite period. The applicant filed a motion on October 10, 2003, stating that he had not received the request for additional evidence. It is noted that the January 23, 2003, Notice of Intent to Deny does not show an address for the applicant. On February 24, 2004, the director reopened the application and again requested that the applicant submit evidence of his continuous residence and his continuous physical presence in the United States. On April 9, 2004, the director again denied the application due to abandonment, because the applicant failed to respond to a notice of intent to deny to submit evidence to establish his eligibility for TPS. 8 C.F.R. § 103.2(b)(13). The director noted that the "Service has conclusive evidence" that the applicant had been convicted of one or more felonies or two or more misdemeanors. The director also noted that the applicant failed to respond to a request to submit evidence to support his TPS application "filed on January 29, 1999." A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen under 8 C.F.R. § 103.5 within 30 days of the denial decision. The record does not reflect that the applicant filed a new motion to reopen within the requisite period.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 26, 2005, under CIS receipt number WAC 05 208 86086, and indicated that he was filing a re-registration application. The director denied that application on August 16, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for TPS.

However, the record of proceedings reveals that the director's April 9, 2004 denial decision was in error. Although the director's denial decision was based on a record of one or more felonies or two or more misdemeanors, there is no evidence of record to support the director's conclusion that the applicant had been convicted of a felony or two or more misdemeanors. It is noted that the applicant's Federal Bureau of Investigation (FBI) results report, completed in connection with his subsequent TPS re-registration application shows no derogatory information. In addition, it is noted the director referred to an application filed on January 29, 1999; however, the applicant's initial application was not filed until June 1, 2001, and the initial re-registration period for El Salvadorans did not begin until March 9, 2001.

The director's denial of the initial application will be withdrawn; the application will be remanded for a new decision. The director's denial of the application for re-registration or renewal is dependent upon the adjudication of the initial application. Since the initial application is being remanded, that decision will be remanded to the director for further adjudication. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS offered to Salvadorans.

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 initial application is reopened, the director's decision is withdrawn, and the application is remanded for a new decision. The re-registration application is remanded for further action consistent with the director's new decision on the initial application.