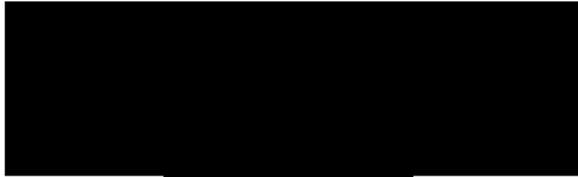




U.S. Citizenship
and Immigration
Services

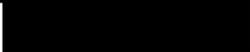
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prevent clearly unwarranted
invasion of personal privacy**



MI

FILE:



Office: California Service Center

Date: OCT 10 2007

[WAC 05 222 84605]

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 the office 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, Texas 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 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 record reveals that the applicant filed an initial TPS application on October 3, 2001, under CIS receipt number SRC 02 034 54563. The Texas Service Center Director denied that application due to abandonment on January 6, 2004, because the applicant failed to respond to a request to appear for scheduled fingerprinting. The director noted that the fingerprinting notice was mailed to the applicant's last known address. 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 motion to reopen.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 10, 2005, under CIS receipt number WAC 05 222 84605, and indicated that he was re-registering for TPS. The Director, California Service Center, denied the re-registration application on April 16, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to re-register for TPS.

The AAO notes that the record contains a Form I – 797C, Fingerprint Notification, dated January 9, 2003, which was mailed to the wrong address. The fingerprint notification was mailed to the applicant at [REDACTED] however, the address on the fingerprint notification was not the applicant's address of record as of the date of mailing as evidenced by a TPS application, filed November 12, 2002, on which the applicant states his address as [REDACTED]. Without evidence that the applicant received the fingerprint notification, there is no basis to determine whether the applicant failed to comply with the director's instructions in the notice.

The record reflects that the applicant was fingerprinted on April 26, 2006, in connection with a subsequent TPS application, which reflects at that time the applicant did not have a criminal record which would make him ineligible for TPS. However, the record does not contain sufficient evidence to establish the applicant's continuous physical presence in the United States from March 9, 2001, to October 3, 2001, the date of filing.

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.