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FILE:



Office: California Service Center

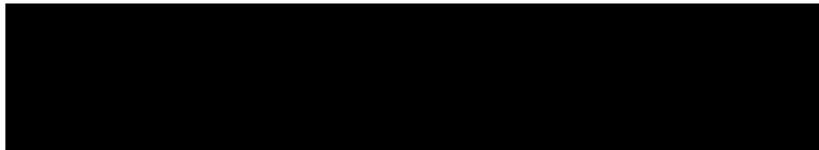
Date:

SEP 06 2007

[WAC 05 155 72442 as it relates to SRC 01 216 55889]

IN RE:

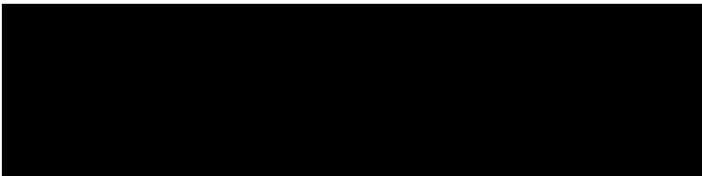
Applicant:



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 office that originally decided your case. Any further inquiry must be made to that office.

*Ciudyn M. Gomez*  
Robert P. Wiemann, Chief  
Administrative Appeals Office *for*

**DISCUSSION:** The initial application was denied by the Director, Texas Service Center (TSC). A subsequent application for re-registration was denied by the Director, California Service Center (CSC), 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. The appeal will be sustained and the applications will be approved.

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 an initial TPS application on May 22, 2001, under receipt number SRC 01 216 55889. The TSC director denied that application due to abandonment, on February 27, 2003, because the applicant failed to respond to the director's Notice of Intent to Deny, dated January 23, 2003, wherein the director requested that the applicant submit evidence within 30 days to establish her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States from March 9, 2001 to the date of filing her TPS application. 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 reflects that the applicant filed a motion to reopen/reconsider on September 2, 2003. The director dismissed the motion as untimely because it was filed after the 33-day period prescribed for filing a motion to reopen/reconsider.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 4, 2005, and indicated that she was re-registering for TPS. The CSC director denied this application on April 26, 2006, because the applicant's initial TPS application had been denied as the applicant did not establish prima facie eligibility for TPS.<sup>1</sup> The director did issue a NOID on February 5, 2006, and sent it to the applicant's counsel. This NOID requested evidence of eligibility for late initial registration, continuous physical residence, continuous residence, date of entry, and nationality and identity. There is no evidence in the record that a response was furnished by either counsel or the applicant.

However, the record of proceedings contains sufficient evidence to establish the applicant's eligibility for TPS and does not reflect any grounds that would bar the applicant from receiving TPS. The record of proceeding contains sufficient evidence to establish the applicant's identity and nationality, her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States from March 9, 2001, to the date of filing her application. The applicant submitted various reliable documents, including the biographic page of her passport, birth certificate, employment records, earnings statements, tax returns, and medical records. Further, the applicant submitted evidence of her entry as a B-2, non-immigrant visitor, at Houston, Texas, on July 20, 2000; this would make her eligible under the late initial registration provisions of 8 C.F.R. § 244.2(f)(2)(i), if such provision were to be applied. Therefore, the director's decision will be withdrawn and the initial application will be approved.

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 approved, the appeal from the denial of the re-registration will be sustained and that application will also be approved.

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<sup>1</sup> The applicant did file another Form I-821 on September 22, 2003.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

**ORDER:** The initial application is reopened and the director's denial of the initial application is withdrawn. The initial application and the re-registration application are both approved. The appeal is sustained.