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FILE:

[REDACTED]
[WAC 05 210 93138]

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 28 2006**

IN RE:

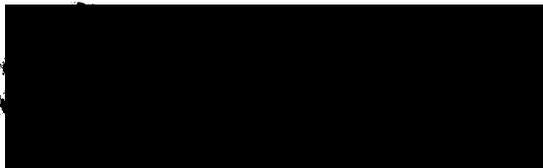
Applicant:



APPLICATION:

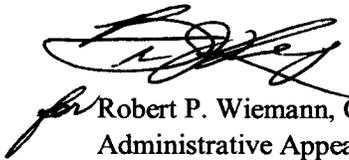
Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

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


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial 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, AAO, 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 applicant filed an initial application for TPS under receipt number SRC 01 270 54238. The director denied the initial application on March 11, 2003, after determining that the applicant had abandoned his application by failing to respond to a Notice of Intent to Deny, (NOID).

Since the application was denied due to abandonment, there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed the current application, on April 28, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

The record reflects that the applicant had responded to the TSC Director's NOID dated January 7, 2003, prior to the denial of his initial TPS application. Also, the applicant had submitted evidence of continuous residence and continuous physical presence that should have been considered by the director when making her determination concerning his initial application.

The applicant's Federal Bureau of Investigation fingerprint results report shows that on December 16, 2003, he was arrested for by the Sugar Land Police Department in Texas for "DRIVING WHILE INTOXICATED." Additionally, on May 7, 2005, he was arrested in Houston, Texas, for "DRIVING WHILE INTOXICATED 2ND." However, the final court dispositions of these arrests are not included in the record of proceeding. CIS must address these arrests and/or convictions in any future decisions or proceedings.

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 is also withdrawn as it is dependent upon the adjudication of the initial application. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

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.