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U.S. Citizenship
and Immigration
Services

[REDACTED]

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AUG 21 2006

FILE: [REDACTED]
[WAC 06 089 70032]

Office: CALIFORNIA SERVICE CENTER

Date:

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]

DUPLICATE COPY

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.

Robert P. Wiemann
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, Nebraska Service Center. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office, and the application will be approved. 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 appeal will be sustained and the application 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 reflects that the applicant filed an initial application for TPS under receipt number LIN 01 170 50578 on April 17, 2001, within the initial registration period. The Nebraska Service Center director denied the application on November 2, 2001 because he determined that the applicant had abandoned her application by failing to appear for a scheduled appointment for fingerprinting. There is no appeal available of an application that has been denied for abandonment; however, the applicant could have filed a motion to reopen within thirty days of the denial decision. The record does not reflect that the applicant filed a motion within the allotted time.

The applicant filed subsequent applications; an application for re-registration filed on February 3, 2005 under receipt number WAC 05 126 7961, was denied by the California Service Center on June 28, 2005 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 does not reflect that the applicant appealed the director's decision.

The applicant filed a subsequent application on February 9, 2005 under receipt number WAC 06 089 70032 and indicated on the application form that "This is my first application to register for Temporary Protected Status." The California Service Center director treated the application as an attempt by the applicant to re-register for TPS and denied the application on March 2, 2006 because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. The director stated in the denial notice that because the initial application had been previously denied, "the applicant is not eligible to file a Late Initial."

On appeal, counsel states that the applicant appears to have satisfied *prima facie* eligibility for TPS. The applicant also submits evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period.

The record of proceedings reveals that the applicant did appear for fingerprinting on November 14, 2001. The applicant was again fingerprinted on April 26, 2005 and March 29, 2006 in connection with her subsequent TPS applications and the results indicated that the applicant did not have a criminal record.

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. Therefore, the director's decision will be withdrawn and the initial application will be approved.

It is noted that the director's March 2, 2006 decision incorrectly states that the applicant was not eligible to file a late initial application. Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant may apply for TPS during the initial registration period, or:

- (f) (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or
 - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The record of proceeding reflects that the applicant stated that she is the spouse of a TPS-eligible alien and furnished a copy of her marriage certificate showing that she was married to [REDACTED] on July 19, 1995 in San Salvador. The applicant, however, did not furnish evidence that her spouse has been granted TPS. However, since the applicant's appeal will be sustained, this issue need not be explored further.

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.

ORDER: The 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.