



U.S. Citizenship
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Services

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FILE:

OFFICE: CALIFORNIA SERVICE CENTER

DATE: DEC 05 2006

[WAC 05 228 81182]

[WAC 01 287 50392]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The case will be remanded to the director for further 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 a TPS application during the initial registration period on August 24, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 287 50392. The director denied that application based on abandonment on December 2, 2002, because the applicant had failed to respond to a request for evidence.¹ The applicant filed a motion to reopen the director's decision on December 31, 2002, under CIS receipt number WAC 03 073 50634. That motion remains unadjudicated by the director.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 16, 2005, and indicated that this is her "first application to register for Temporary Protected Status (TPS)." The director treated the application as a re-registration application and determined that because the applicant's initial TPS application had been denied, the applicant was not eligible to apply for re-registration for TPS; therefore, the director denied the application on April 24, 2006.

On appeal, counsel asserts that the applicant filed a motion to reopen on December 31, 2002, in response to the denial of the initial application, and that to date, this motion remains pending. She states that, nevertheless, it was decided that the applicant file for "Late TPS since the applicant is eligible and we were not receiving any response to our email inquiries on the status of her MTR [motion to reopen]."

As noted above, the applicant filed a motion to reopen the initial TPS application. That motion must be addressed by the director before a decision is made on the applicant's second TPS application [WAC 05 228 81182]. Therefore, the director's decision to deny this second TPS application will be withdrawn.

As the director's initial decision was based on abandonment, the AAO has no jurisdiction on this case. Therefore, the case will be remanded and the director shall consider the motion.

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 case is remanded to the director for further action consistent with the above.

¹ The applicant was requested on July 5, 2002, to provide documents to show that she had been continuously physically present in the United States from March 9, 2001, to the date of filing the TPS application.