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JUL 25 2006

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

[EAC 01 206 51630]

[WAC 05 225 86233]

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, Vermont 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 claims to be 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 applicant filed an initial application for TPS under receipt number EAC 01 206 51630. The Director of the Vermont Service Center denied the initial application on February 10, 2003, due to abandonment because the applicant failed to appear for his fingerprint appointment or to request that his fingerprint appointment be re-scheduled. However, the record of proceedings reveals that the director's decision was in error. Specifically, the record reveals that the denial decision was mailed to an old address. The applicant reported a new address on his Form I-765, Application for Employment Authorization, filed with the California Service Center on September 19, 2002. The denial decision was mailed to the applicant's former address. Since the denial decision was mailed to an old address, the applicant was denied the opportunity to file a motion to reopen the case within 30 days of the issuance of the denial decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 13, 2005, and indicated that he was re-registering for TPS or renewing his temporary treatment benefits. The Director of the California Service Center denied the application on August 20, 2005, because the applicant's initial application had been denied and the applicant was not eligible for re-registration or renewal of his temporary treatment benefits.

The 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.

It is noted that the record of proceedings as it is presently constituted, does not contain sufficient evidence to establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite periods as described at 8 C.F.R. § 244.2(b) and (c).

It is further noted that the applicant's 2005 fingerprint results report reveals the following offenses:

1. On November 17, 2001, the applicant was arrested in Yaphank, New York, and charged with criminal mischief in the fourth degree in violation of 145.00 PL.
2. On February 20, 2005, the applicant was arrested in Los Angeles, California, and charged with one count of "THRTN CRIME, INT, TERRORIZE."

The director shall provide the applicant with an opportunity to provide the final court dispositions of these arrests.

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.