

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

M1



FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: NOV 02 2006

[WAC 05 196 70009]

[EAC 02 066 52619]

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC), 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.

A review of the record of proceeding reveals the following:

1. The applicant filed a TPS application on December 12, 2001, during the initial registration period under Citizenship and Immigration Services (CIS) receipt number EAC 02 066 52619.

2. On December 16, 2002, the Director, Vermont Service Center (VSC), requested that the applicant submit evidence to show that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application. There was no evidence that the applicant responded to the request.

3. On July 28, 2003, the Director, VSC, denied the initial TPS application after determining that the applicant had abandoned his application based on his failure to appear for fingerprinting on April 20, 2002.

4. On October 16, 2003, former counsel filed a motion to reopen the applicant's initial application (the motion was assigned CIS receipt number EAC 04 013 50710). Counsel stated that the applicant moved from New York to Los Angeles, California, that a change of address had been made, and that he has been filing TPS applications in Los Angeles, not in New York.

5. On February 4, 2004, former counsel submitted a letter requesting that the applicant's case be reopened because the applicant had moved from New York to California and the applicant mistakenly believed that every time he was renewing his work permit, he was notifying CIS of his current address. She referenced the prior motion to reopen (EAC 04 013 50710). Former counsel submitted a copy of the status of his application, obtained from the CIS website, indicating that the applicant's motion to reopen or reconsider was received on October 20, 2003, and was pending (CIS receipt number EAC 04 013 50710). She also submitted additional evidence in an attempt to establish the applicant's continuous residence and continuous physical presence during the qualifying period.

6. On April 7, 2004, the Director, VSC, rejected a TPS application because the Form I-821 was not signed. The applicant was advised that his motion to reopen the denial of the initial Form I-821 was currently pending and that he will receive a final action by mail from the VSC (No. 4 above).

7. On May 3, 2004, the Director, CSC, issued Form I-797, Notice of Action, indicating that Form I-821 application(s) and supporting documents are being returned to the applicant because his initial I-821 was denied by the VSC on July 28, 2003 (No. 3 above); also, that the applicant's "Motion WAC 04 088 51754 was rejected by the California Service Center on February 10, 2004." Neither this motion nor the CSC's rejection notice is contained in the record of proceeding.

8. On September 25, 2004, the Director, CSC, denied a TPS application (no reference of a receipt number was included) because the evidence submitted was insufficient to establish continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001.

9. The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 14, 2005, under CIS receipt number WAC 05 196 70009, and indicated that he was re-registering for TPS. The Director, California Service Center (CSC), denied the re-registration application on August 16, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

10. On September 16, 2005, the applicant appealed the decision of the Director, CSC, to deny the re-registration application. He requests that his case be reopened because he has not been receiving correspondence regarding his case.

It appears that the applicant's case, to include all applications filed at the VSC and the CSC, and decisions made by the VSC and the CSC, had not been thoroughly reviewed before a decision was rendered on August 16, 2005, to deny the current re-registration application. While the CSC indicated that the applicant's motion was rejected by CSC on February 10, 2004 (No. 7 above), that motion and decision are not contained in the record. Nor is there evidence that VSC issued a decision on the applicant's motion as stated on the VSC notice dated April 7, 2004 (No. 6 above).

The evidence contained in the applicant's file is not sufficient to support the Director, CSC, decision of denial. It appears that the re-registration application was prematurely denied as there is no evidence that a decision had been made pertaining to the applicant's motion to reopen the initial TPS application. Therefore, the case will be remanded. The director shall review all CIS records pertaining to this applicant, and all files relating to this individual's TPS application history shall be consolidated into the applicant's permanent record. 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 case is remanded to the director for further action consistent with the above.