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U.S. Citizenship
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: NOV 9 2 2006

[WAC 05 204 77851]

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.

Cindy N. Gomez
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, California Service Center (CSC). A subsequent application for re-registration was denied by the Director, CSC, 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 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 Form I-821, Application for Temporary Protected Status, under Citizenship and Immigration Services (CIS) receipt number SRC 01 196 55852. The director denied that application on March 25, 2003, after determining that the applicant had abandoned his application by failing to respond to a request for evidence regarding his nationality and identity.

Prior to the director's March 25, 2003 denial, the applicant's record already contained the applicant's El Salvadoran national identity card establishing his nationality and identity. Therefore, the initial application should not have been considered abandoned because the only evidence requested already resided within the record.

The applicant filed the current Form I-821, on April 22, 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.

If an alien is filing a re-registration application, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant's Federal Bureau of Investigation fingerprint results report shows that on February 22, 1996, he was arrested by the Fresno, California, Sheriff's Office for "Have Gun at School," "CCW Person" and "Loaded Weapon Pub Place." On August 8, 1999, he was arrested by the Fort Pierce, Florida, Police Department for a 2nd degree felony. On March 16, 2002, he was arrested by the Fort Pierce, Florida Police Department for another 2nd degree felony. However, the final court dispositions for these crimes are not included in the record of proceeding.

CIS shall provide the applicant an opportunity to provide final court dispositions or sufficiently documented answers for all of the arrests listed above.

It is noted that, in removal proceedings held on August 26, 1997, an Immigration Judge in San Francisco, California, ordered the applicant deported "in absentia" to El Salvador. It is further noted that the record contains an outstanding Warrant of Removal/Deportation (Form I-205) issued by the District Director of the San Francisco, California, office of CIS on August 26, 1997.

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.