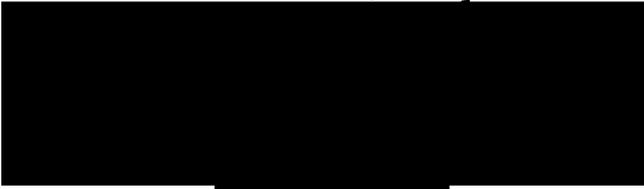




U.S. Citizenship
and Immigration
Services

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invasion of personal privacy



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FILE: [REDACTED] Office: California Service Center Date: **APR 30 2007**
[WAC 05 221 86920]

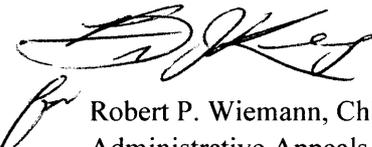
IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: 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 application was denied by the Director, California 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 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 reveals that the applicant filed an initial TPS application on July 1, 2001, under CIS receipt number SRC 01 223 66641. The Texas Service Center Director denied that application on August 11, 2004, due to abandonment. The director the applicant failed to respond, within 90 days, to a May 5, 2004, notice of intent to deny, to submit evidence to establish his nationality and identity, and to establish the requisite continuous residence and continuous physical presence in the United States. A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen under 8 C.F.R. § 103.5 within 30 days of the denial decision. The record indicates that the applicant filed a late motion to reopen or reconsider, on May 11, 2005. The record does not reflect a decision on that motion.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 9, 2005, under CIS receipt number WAC 05 221 86920, and indicated that he was re-registering for TPS.

The director 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.

With his initial application, the applicant submitted his birth certificate in Spanish, with and English translation. With his re-registration application, the applicant submitted the biographic page of his El Salvador passport; a pay-stub and an Earnings Statement both dated in year 2000; and some of the same evidence earlier submitted.

On appeal, the applicant reasserts eligibility for TPS. With the appeal, in an attempt to establish his continuous residence in the United States and his continuous physical presence, the applicant submits a photocopy of:

- An invoice, requiring payment on September 22, 2004;
- A receipt, dated September 7, 2003;
- An Earnings Statement, dated April 15, 2003;
- An Earnings Statement, dated November 23, 2001;
- A U.S. Express mail receipt, date-stamped July 23, 2001;
- Three Western Union money transfer receipts, dated July 23, 2001, June 13, 2001; and April 19, 2001;
- A State of North Carolina Identification card, issued on September 25, 2001; and
- A California Driver License, dated November 19, 2002.

If the applicant is filing an application as a re-registration, 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 initial denial for abandonment was, however, in error. The AAO notes that the record contains a request for evidence, dated May 6, 2004, which was mailed to the same address as the director's denial notice, dated August 11, 2004; however, that address was not the applicant's address of record as of the date of mailing (as evidenced by an approved Application for Employment Authorization, Form I-765, date-stamped February 1, 2003). At the time these documents were mailed, the applicant's address of record was [REDACTED]. However, both documents were mailed to a different address: [REDACTED] which was not the applicant's address of record. There is a reasonable inference that the applicant did not receive the request for additional evidence and the notice of denial. Without evidence that the applicant received these notices, there is no basis to determine whether the applicant failed to comply with the director's instructions in the request for evidence, and the appeal instructions.

The director's denial of the initial application will be withdrawn; the case will be remanded and the director shall reissue the request for evidence to give the applicant the opportunity to provide evidence of his nationality and identity, his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001, to July 1, 2001, the date of filing his initial TPS application.

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.

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.