

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



M

FILE: [REDACTED] OFFICE: California Service Center DATE: **DEC 04 2007**  
[WAC 05 139 84739 –  
as it relates to  
SRC 01 157 60566 and SRC 03 236 54446]

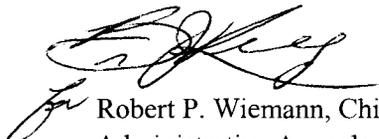
IN RE: Applicant: [REDACTED]

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.

  
for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The initial application was denied by the Director, Texas Service Center (TSC). A second application was also denied by the TSC Director. Both applications will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office (AAO) and approved. A subsequent application for re-registration was denied by the Director, California Service Center (CSC), and is currently before the AAO on a motion to reopen. The motion will be granted, and the application will be approved.

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 director denied the application on the ground that since the applicant's initial application for TPS had been denied, he was ineligible for re-registration under section 244 of the Act.

On appeal, the applicant asserts that he meets all the requirements for TPS and requests that his case be reviewed.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or
  - (2) During any subsequent extension of such designation if at the time of the initial registration period:
    - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
    - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;

- (iii) The applicant is a parolee or has a pending request for reparole; or
- (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

El Salvadoran nationals applying for TPS must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

The applicant filed his first Form I-821, Application for Temporary Protected Status [SRC 01 157 60566], during the initial registration period on March 27, 2001. It was denied on July 26, 2002, on the ground of abandonment after the applicant failed to respond to a request for evidence that had been mailed to him on February 15, 2002. The applicant filed a second TPS application [SRC 03 236 54446] on August 26, 2003. That application was likewise denied on the ground of abandonment, on February 11, 2004, after the applicant failed to respond to a 30-day request for evidence in a notice of intent to deny issued on January 9, 2004. The applicant filed a motion to reopen, but it was rejected because it was not filed within the 33-day period prescribed in the regulations.

The current TPS application, designated as a re-registration application, was filed with the California Service Center on February 16, 2005. It was denied by the director on February 6, 2006, reopened on June 13, 2006, and denied again on July 13, 2006, on the ground that the applicant was ineligible for re-registration since his initial application had been denied on July 26, 2002.

On August 11, 2006, the applicant submitted an appeal, Form I-290B, to the AAO. This was the wrong office, however, since the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that an appeal must be filed "with the office where the unfavorable decision was made." The AAO returned the appeal to the applicant, who then resubmitted it to the California Service Center, where it was received on August 23, 2006. This was 41 days after the decision was issued, and therefore did not comply with the 33-day period prescribed in the regulations for filing an appeal. See 8 C.F.R. § 103.3(a)(2)(i) and 8 C.F.R. § 103.5a(b). The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(I) provides that "[a]n appeal which is not filed within the time allowed must be rejected as improperly filed."

The regulations give the AAO (as well as the service centers and district offices) the authority to reopen a proceeding or reconsider a decision *sua sponte* if the circumstances so warrant. See 8 C.F.R. § 103.5(a)(5). Upon review of the entire record in this case, the AAO notes that the applicant's initial Form I-821 was timely filed during the initial registration period for TPS applicants from El Salvador, and that a photocopy of the applicant's personal identity document from the Government of El Salvador with a photo ID was submitted with the second TPS application, which complies with the evidentiary requirements of 8 C.F.R. § 244.9(a)(1) to establish the applicant's identity and nationality. As evidence of his continuous residence and continuous physical presence in the United States, the applicant – who claims to have entered the United States without inspection on October 23, 1996 – submitted with his initial TPS application a photocopy of his State of North Carolina identification card

with a photo ID, issued on June 13, 2000. With his second TPS application the applicant submitted photocopies of the following additional documentation: (1) two utility bills issued to the applicant by Duke Power in October and November 1998; (2) a receipt from a Catawba County Court in North Carolina for a \$50.00 license fee, dated April 10, 2000; (3) a receipt from a Catawba County Court in North Carolina, dated April 19, 2000, for \$300.00 in fines, criminal fees, and other assessments relating to a DWI (driving while intoxicated) violation; (4) a medical form from Mental Health Services of Catawba County, North Carolina, signed by the applicant and dated May 8, 2000; (5) a letter to the applicant at his North Carolina address from a financial institution, dated December 16, 2000; (6) a State of North Carolina driver license issued to the applicant on April 19, 2001; and (7) a letter to the applicant at his North Carolina address from an insurance company, dated May 15, 2002. In a late response to the notice of intent to deny the applicant also submitted a photocopy of his Form W-2, Wage and Tax Statement, for 2001. Based on the foregoing documentation, the applicant has established his continuous physical presence in the United States since March 9, 2001, and his continuous residence in the United States since February 13, 2001, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(b) and (c).

According to Citizenship and Immigration (CIS) records, the applicant has not been convicted of any felony or misdemeanor in the United States. Nor does the record reveal that the applicant is ineligible for TPS on any other grounds. The AAO concludes that the applicant has established his eligibility for TPS. Accordingly, the initial application [SRC 01 157 60566], timely filed during the initial registration period, will be reopened *sua sponte* by the AAO. The TSC Director's denial of that application on July 26, 2002, will be withdrawn and the application will be approved. The applicant's second TPS application [SRC 03 236 54446] will also be reopened *sua sponte* by the AAO. The TSC Director's denial of that application on February 11, 2004, will be withdrawn and the application will be approved.

As for the re-registration application [WAC 05 139 84739], the CSC Director's decision is dependent upon the adjudication of the initial application(s). Since the initial application (as well as the second) is being approved, the re-registration application is also approvable. With respect to the late filed appeal of the director's denial, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) provides that: "If an untimely appeal meets the requirements of a motion to reopen . . . or a motion to reconsider . . . the appeal must be treated as a motion, and a decision must be made on the merits of the case." In accordance with the foregoing regulation, the AAO will treat the late filed appeal as a motion to reconsider, withdraw the director's denial of July 13, 2006, and approve the re-registration application.

An alien applying for Temporary Protected Status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has met that burden.

**ORDER:** The initial application [SRC 01 157 60566] is reopened *sua sponte* and the TSC Director's denial of that application is withdrawn. The second application [SRC 03 236 54446] is also reopened *sua sponte* and the TSC Director's denial of that application is also withdrawn. In addition, the motion to reconsider the decision of the CSC Director on the re-registration application [WAC 05 139 84739] is granted and the denial of that application is withdrawn.



The initial application, the second application, and the re-registration application are all approved.