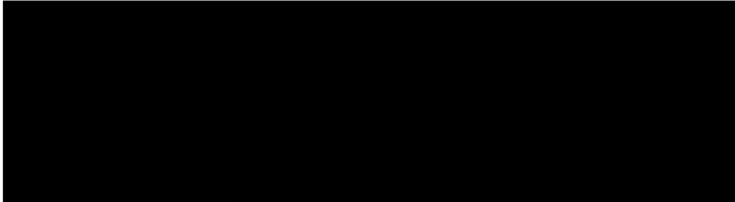


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FILE:

OFFICE: VERMONT SERVICE CENTER

DATE: FEB 28 2007

[EAC 06 102 70026]
[EAC 05 221 72127]

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, 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.

The record reveals that the applicant filed a TPS application during the initial registration period on July 26, 2002, under Citizenship and Immigration Services (CIS) receipt number EAC 02 251 51549. The director denied that application on May 7, 2003, after determining that the applicant had abandoned his application based on his failure to appear for fingerprinting on October 22, 2002. The applicant did not file a motion to reopen within 30 days from the date of the denial. The applicant filed Form I-821, Application for Temporary Protected Status, on May 9, 2005, under CIS receipt number EAC 05 221 72127, and indicated that he was re-registering for TPS. That application remains pending.

The applicant filed the current Form I-821 on January 10, 2006, and indicated that this is his “first application to register for Temporary Protected Status (TPS).” The director treated the application as a re-registration application and determined that because the applicant’s initial TPS application had been denied, the applicant was not eligible to apply for re-registration for TPS; therefore, the director denied the application on May 5, 2006.

It is noted that the record indicates that the applicant subsequently was fingerprinted and the Federal Bureau of Investigation fingerprint results report dated July 29, 2005, does not reflect a criminal record that would bar the applicant from receiving TPS. However, the record contains insufficient evidence to establish continuous residence and continuous physical presence during the qualifying period. Furthermore, the record of proceeding contains an unadjudicated Form I-821, re-registration application (EAC 05 221 72127). That application must be adjudicated before a decision is made on the present [initial] TPS application (EAC 06 102 70026).

Therefore, the case will be remanded to the director to adjudicate the re-registration application. The current application will also be remanded to the director for further action. 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.