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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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MJ

FILE:



[SRC 01 251 57731]
[WAC 05 221 86922]

Office: CALIFORNIA SERVICE CENTER

JAN 19 2007
Date:

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 California Service Center. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, Texas 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.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The applicant filed an initial application for TPS under receipt number SRC 01 251 57731. The Director of the Texas Service Center denied the initial application on August 18, 2004, after determining that the applicant had abandoned her application by failing to respond to a request for additional evidence dated May 11, 2004. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days. On May 11, 2005, more than a year after the issuance of the denial decision, the applicant filed a motion to reopen her case with the Missouri Service Center under receipt number MSC 05 223 11772.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 9, 2005, and indicated that she was re-registering for TPS or renewing her temporary treatment benefits. The director denied the application on August 16, 2005, because the applicant's initial TPS application had been denied and she was not eligible for re-registration or renewal of temporary treatment benefits.

As the director's decision to deny the applicant's initial TPS application was based on abandonment, the AAO has no jurisdiction over this case. Therefore, the case will be remanded and the director shall consider the applicant's motion to reopen.

The 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 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.

It is noted that the record of proceedings, as it is presently constituted, does not contain sufficient evidence to establish the applicant's qualifying continuous residence and continuous physical presence in the United States throughout the requisite periods.

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.