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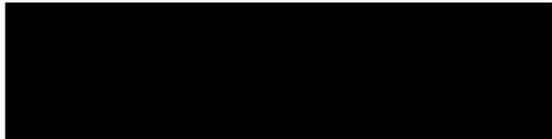
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:  Office: CALIFORNIA SERVICE CENTER
[WAC 05 152 78013 AS IT RELATES TO SRC 01 228 63877]

Date: **JUN 08 2007**

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.

Cindy M. Gomez
Robert P. Wiemann, Chief *for*
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, Texas Service Center (TSC). A subsequent application for re-registration was denied by the Director, California Service Center (CSC), 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 appeal will be sustained.

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 applicant filed an initial Form I-821, Application for Temporary Protected Status, during the initial registration period on May 31, 2001, under receipt number SRC 01 228 63877. The TSC director denied the application on April 13, 2004, due to abandonment because the applicant failed to appear for a fingerprinting appointment. However, the record of proceeding reveals that the request to appear for fingerprinting was mailed on October 3, 2003, to the applicant at the wrong address [redacted] Irving, Texas 75062]. The applicant's correct address of record at that time was 2 [redacted], Houston, Texas 77014. This address was provided by the applicant on March 3, 2003, in response to an intent to deny requesting him to provide additional information.

The record further reveals that the director attempted to reschedule the fingerprint appointment. However, the notice in the file did not change the date and time of appointment, April 5, 2003, a date that had already passed when the notice was mailed out on September 3, 2004.

The record also indicates that the applicant's fingerprints were taken on April 27, 2005 and March 29, 2006. The Federal Bureau of Investigations (FBI) fingerprint results reports were favorable to the applicant and indicate that he has no bars to a favorable finding of TPS.

Although the FBI fingerprint results report indicates no criminal record for the applicant, the record does contain evidence indicating that the applicant was arrested on May 27, 1998, and charged with a 2nd degree felony—"forge a govt instrument." On July 15, 1998, in the 338th District Court, Harris County, Texas, Cause No [redacted] the court authorized the State to prosecute the case as a Class A misdemeanor—"forgery." Under section 244 of the Immigration and Nationality Act and the governing regulations, the conviction for one misdemeanor does not bar the applicant for eligibility under the provisions of TPS.

In addition, section 212(a)(2)(A)(ii) of the Act provides for an exception to excludability [inadmissibility] of an alien convicted of only one crime of moral turpitude, where the maximum penalty possible for the crime did not exceed imprisonment for one year and the alien was not sentenced to a term of imprisonment in excess of six months (regardless of the extent to which the sentence was ultimately executed). In this case, the maximum penalty possible for a Class A misdemeanor for the State of Texas does not exceed one year, and the applicant was sentenced to six months of imprisonment. Therefore, the applicant does qualify under this exception and cannot be found inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The initial TPS application also contains sufficient evidence that he meets the requirements for eligibility under TPS as follows:

- (1) Passport issued by El Salvador;
- (2) Birth certificate of his son, born on November 6, 2000 and filed December 29, 2000;
- (3) Apartment lease agreement dated January 30, 2001;
- (4) Internal Revenue Service Form 1099, Miscellaneous Income Statement, for the year 2001;
- (5) TPS re-registration applications submitted on October 30, 2002, October 28, 2003, and March 1, 2005.

The evidence submitted, as detailed in Nos. 1 through 5, supports the applicant's claim of qualifying continuous residence and continuous physical presence, and nationality and identity.

Based on the foregoing, the applicant has established that he meets the requirements for TPS under section 244 of the Immigration and Nationality Act. Therefore, the director's decision will be withdrawn, both applications will be approved, and the appeal will be sustained.

It also is noted that the applicant was ordered removed [deported] by an Immigration Judge, on April 25, 1995, at Houston, Texas, and that a Warrant of Deportation [Removal] was issued on February 13, 1996, based upon that Order. However, in a Class Action Settlement Agreement approved in *Walters v. Reno*, No. C94-1204C (W.D. Wash., February 22, 2001), the applicant was recognized as a class member with the order that the final removal [deportation] order issued against the applicant be vacated. Specific instructions governing such class members and their treatment, also were issued by the Executive Associate Commissioner, Office of Field Operations, and the Office of the General Counsel (jointly), on August 21, 2001.

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 this burden.

ORDER: The director's decision is withdrawn, the applications are approved, and the appeal is sustained.