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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

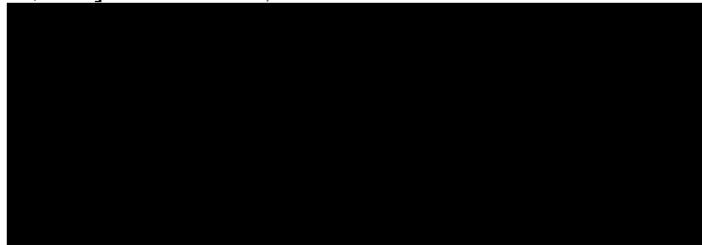
DATE: **MAR 05 2007**

[WAC 01 210 55724]

[WAC 05 229 70277]

IN RE:

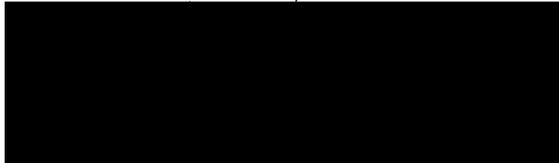
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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 initial 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 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 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 indicates that the applicant filed a TPS application during the initial registration period on May 7, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 210 55724. The director denied that application on May 18, 2004, after determining that the applicant had abandoned her application based on her failure to respond to a request for evidence. On June 1, 2004, the applicant filed a motion to reopen the director's denial decision. The director dismissed the motion on June 30, 2004, because the motion did not state new facts and was not supported by affidavits or other documentary evidence.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on December 15, 2004, and indicated that she was re-registering for TPS. The director denied the re-registration application on June 27, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

The Federal Bureau of Investigation fingerprint results report indicates that on April 9, 1988, in Los Angeles, California, the applicant (name used: [REDACTED]) was arrested for "grand theft property." On December 30, 2003, the applicant was requested to submit police clearance and final court disposition(s) of any and all arrests. The director determined that the applicant failed to respond and denied the application based on abandonment on May 18, 2004. However, the record indicates that the applicant responded to the director's request for evidence, and it was received at the California Service Center on May 11, 2004, prior to the director's denial decision on May 18, 2004. The applicant requested an additional 60 days in order to "clear-up" her criminal record. She also submitted a letter from the Los Angeles Superior Court indicating that no record was found regarding [REDACTED].

Accordingly, the director's finding that the applicant abandoned her initial application will be withdrawn, and 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 applicant, on appeal, submits the final court disposition of her April 9, 1988 arrest, indicating that on June 27, 1988, in the Municipal Court of San Fernando Courthouse Judicial, County of Los Angeles, California, Case No. [REDACTED] the applicant, under the name of [REDACTED], was convicted of the misdemeanor offense of "theft of property." The applicant's one misdemeanor conviction does not render her ineligible under section 244(c)(2)(B)(i) of the Act. However, the evidence contained in the record of proceeding is insufficient to establish the applicant's qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c).

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