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FILE:

[REDACTED]

Office: California Service Center

Date:

MAR 21 2007

[WAC 05 229 73669 as it relates to LIN 01 165 51609]

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:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office California Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, Nebraska 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. The appeal will be sustained and the applications 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 record reveals that the applicant filed an initial TPS application on April 10, 2001, under Citizenship and Immigration Services (CIS) receipt number LIN 01 165 51609. The director denied that application on October 10, 2001, because the applicant failed to report for scheduled fingerprinting. The director, therefore, considered that application abandoned. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen under 8 C.F.R. § 103.5 within 30 days of the denial decision. The record reflects that the applicant filed a motion to reopen/reconsider by letter. The applicant stated in the motion that he did appear for fingerprinting as scheduled, and alleged that CIS erred in denying his TPS application for failure to report for fingerprinting. The Nebraska Service Center Director stated that although the applicant did appear, he did not appear on the appointed time. Applicant's counsel counters with evidence that the applicant had rescheduled his appointment for September 19, 2001. The applicant was again fingerprinted on June 7, 2005, and on April 26, 2006.

The applicant filed subsequent applications, including the current Form I-821, Application for Temporary Protected Status, on May 17, 2005, under CIS receipt number WAC 05 229 73669, and indicated that he was re-registering for TPS. The director denied this application on August 16, 2005, because the applicant's initial TPS application had been denied.

However, the record contains sufficient evidence to establish the applicant's eligibility for TPS and does not reflect any grounds that would bar the applicant from receiving TPS; the record of proceedings reveals that the Federal Bureau of Investigations (FBI) fingerprint checks conducted in connection with the re-registration applications show no derogatory results. The record contains sufficient evidence to establish the applicant's identity and nationality, his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the date of filing his application. The record of proceedings contains a photo ID in the form of the biographic page of the applicant's El Salvador passport. Therefore, the director's decision will be withdrawn, and the initial application will be approved.

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 approved, the appeal from the denial of the re-registration will be sustained and that application will also be approved.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden.

ORDER: The application is reopened and the director's denial of the initial application is withdrawn. The initial application and the re-registration application are both approved. The appeal is sustained.