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U.S. Citizenship  
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FILE:



Office: California Service Center

Date: **NOV 15 2007**

[WAC 05 117 73013]

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 (CSC). A subsequent application for re-registration was also denied by the Director, 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. 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 5, 2001, under CIS receipt number WAC 01 173 52178. The director denied that application on February 11, 2004, because the applicant failed to submit a final court disposition. The applicant's appeal was dismissed on May 3, 2005, by the AAO Director (now Chief), because the applicant had failed to submit the final court disposition for her October 14, 2000 arrest. A subsequent motion to reopen was rejected by the CSC director on September 22, 2005 because it was untimely filed.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 25, 2005, under CIS receipt number WAC 05 117 73013, and indicated that she was re-registering for TPS. The director denied the re-registration application, on September 22, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. A subsequent late appeal was treated by the director as a motion to reopen/reconsider, and was dismissed by the director on August 16, 2006.

On appeal, counsel reasserts the applicant's eligibility for TPS. With the appeal, counsel submits court documents from the Executive Clerk of Superior Court of California, County of Los Angeles, California, which state that there is no record pertaining to the applicant.

The final court disposition submitted confirms that the applicant has not been convicted of a felony or two misdemeanors. It also is noted that a document from the Los Angeles Police Department pertaining to the arrest on October 14, 2000, shows "Prosecutor Release – Detention Only. No case filing information in the Los Angeles County." In addition, the applicant provided a certified copy of a form from the Superior Court of California, County of Los Angeles, California, which indicates that the custodian of records for the court had conducted a thorough search of the Misdemeanors and/or Felony indexes, and there is no record in the office making reference to the applicant. The record does not indicate any derogatory information for applicant. The applicant is, therefore, not ineligible for TPS

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 contains sufficient evidence to establish the applicant's identity and nationality, her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States from March 9, 2001, to the date of filing her application. The record of proceedings contains a photo ID in the form of the biographic page of the applicant's El Salvador passport. In addition, the record contains documentation, including a letter from the Los Angeles Unified School District, Division of Adult and Occupational Education, which confirms the applicant's enrollment from October 16, 2000 through December 12, 2003. The evidence of record establishes the requisite continuous residence and continuous physical presence. 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 petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner 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.