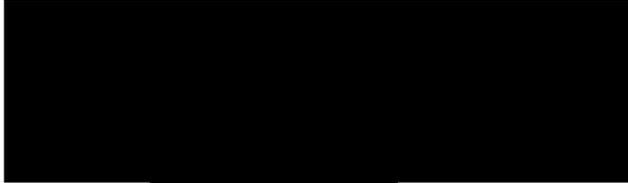


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FILE:



Office: California Service Center

Date:

**OCT 04 2007**

[WAC 05 232 71026, as it relates to LIN 01 153 52675]

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.

for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The applicant's temporary protected status was denied by the District Director, Indianapolis District Office. 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.

The record reveals that the applicant filed an initial TPS application on April 2, 2001, under CIS receipt number LIN 01 153 52675. The District Director, Indianapolis District Office denied the application, on October 19, 2001, due to abandonment because the applicant failed to submit a criminal history records check issued by the local police department which has jurisdiction over each place the applicant resided. 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 does not reflect that the applicant filed a motion to reopen

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 20, 2005, under CIS receipt number WAC 05 232 71026, and indicated that he was re-registering for TPS. The Director, California Service Center, denied this application on August 16, 2005, because the applicant's initial TPS application had been denied.

It is noted that the applicant indicated on the Notice of Appeal to the Administrative Appeals Office (AAO), Form I-290B, filed September 13, 2005, that an appeal brief will be submitted within 30 days. However, the record does not reflect receipt of an appeal brief. On appeal, the applicant submitted a photocopy of an Employment Authorization Card, issued in 2002. The applicant has not submitted any additional evidence on appeal. Therefore, the record must be considered complete.

As noted above, although the Indianapolis District Office Director denied the initial application for abandonment, the record reflects that the applicant did respond to the director's request. The applicant submitted a criminal background check from the Indianapolis-Marion County Records Repository, dated September 11, 2001, which indicates "No Record on File." It is noted that the applicant's Federal Bureau of Investigation (FBI) results reports, completed on May 17, 2001, and on June 22, 2001, in connection with the initial TPS application indicated the results were unclassifiable. However, a Federal Bureau of Investigation (FBI) results report, completed on April 21, 2006, in connection with a subsequent TPS re-registration application, reflects no derogatory information at that time. The record indicates that the applicant did not abandon his application. Therefore, the director's decision to deny the application, for abandonment, was inappropriate.

The director's denial of the initial application will be withdrawn; the application will be remanded, and the director shall re-issue the request for evidence to afford the applicant an opportunity to submit the evidence to establish his eligibility for TPS. 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 El Salvadorans.

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.