



U.S. Citizenship
and Immigration
Services

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FILE:

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OFFICE: CALIFORNIA SERVICE CENTER

DATE: OCT 05 2007

[WAC 01 214 51987]
[WAC 05 122 70145]
[WAC 07 009 50681 Motion]

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:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, California Service Center (CSC). The application for re-registration was also denied by the CSC Director, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted, the case will be reopened, *sua sponte*, and the applications will be approved.

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 reveals that the applicant filed a TPS application during the initial registration period on May 11, 2001, under receipt number WAC 01 214 51987. The CSC director denied that application on August 9, 2004, after determining that the applicant had abandoned his application based on his failure to appear for fingerprinting.

The applicant filed a subsequent TPS application on January 26, 2006, under Citizenship and Immigration Services (CIS) receipt number WAC 05 122 70145, and indicated that he was re-registering for TPS. The CSC director denied the re-registration application on August 16, 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 applicant appealed the CSC director's decision to the AAO on August 25, 2005. The AAO dismissed the appeal on June 1, 2006, after determining that the applicant had not previously been granted TPS; therefore, he was not eligible to re-register for TPS or to renew temporary treatment benefits. The AAO also indicated that if the applicant was attempting to file a late initial application for TPS instead of an annual re-registration, he had failed to provide any evidence to establish that the application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2).

On motion, the applicant asserts that he never abandoned his initial TPS application due to failure to appear for fingerprinting; in fact he requested a reschedule of his appointment which he never received. The applicant submits a copy of the Fingerprint Notification dated February 3, 2004, indicating that a request was made to reschedule his appointment for the next available "Saturday afternoon."

The record also indicates that the applicant subsequently was fingerprinted and the Federal Bureau of Investigation fingerprint results reports dated March 25, 2005 and June 15, 2006, do not reflect a criminal record that would bar the applicant from receiving TPS. The applicant, therefore, has overcome the sole ground for the denial of his initial application for TPS. The record of proceeding contains sufficient evidence to establish the applicant's eligibility for TPS and also does not reflect any grounds that would bar the applicant from receiving TPS. Additionally, the applicant has furnished sufficient evidence to establish 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). Therefore, the decisions of the CSC director to deny the initial application and the re-registration application will be withdrawn and the TPS applications will be approved.

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 decisions of the CSC director dated August 9, 2004 and August 16, 2005, and the decision of the AAO dated June 1, 2006, are withdrawn and the TPS applications are approved.