



U.S. Citizenship
and Immigration
Services

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FILE:

Office: California Service Center

Date: SEP 04 2007

[WAC 05 214 73822]

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 APPLICATION:

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 application for temporary protected status was denied by the Director, Texas 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, and the case will be remanded for further consideration and action.

The applicant is stated to be 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 a late initial TPS application on November 5, 2002, under CIS receipt number SRC 03 033 53767. The Director, Texas Service Center, denied that application on October 27, 2003, because the applicant failed to respond to a January 24, 2003 request to submit evidence of his eligibility for late initial registration, his continuous residence, and his continuous physical presence in the United States, and his nationality and identity. The director, therefore, considered the TPS 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 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 2, 2005, under CIS receipt number WAC 05 214 73822, and indicated that he was re-registering for TPS. The Director, California Service Center, denied that application on August 16, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to re-register for TPS.

On appeal, the applicant asserts that he is a national of El Salvador and that he has resided continuously in the United States August 1995. The applicant asserts further that his initial application was timely filed as he had a pending Asylum application, and he is the spouse of a TPS registrant.

The AAO notes that the record reflects that the applicant was married to a TPS registrant, [REDACTED] on April 22, 1995. The record indicates that the applicant remains married to [REDACTED]. Therefore, the applicant is eligible for late initial registration for TPS.

However, the applicant has not submitted sufficient evidence to establish the requisite continuous residence and continuous physical presence in the United States. In addition, the applicant has not submitted sufficient evidence to establish his nationality and identity. The applicant has furnished a copy of a birth certificate (in Spanish) and English translation; however, he has not submitted a national identity document from his country bearing a photograph and or/fingerprint. The birth certificate alone is insufficient to establish the applicant's identity and nationality under the provision of 8 C.F.R. § 244.9(a)(1).

It is noted, however, that although the Texas Service Center Director denied the initial application for abandonment, the record reflects that the applicant did respond, on April 29, 2003, to the notice of intent to deny by submitting additional evidence. Therefore, the director's decision to deny the application, for abandonment, was inappropriate. Therefore, 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.