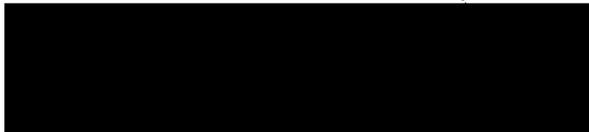




U.S. Citizenship
and Immigration
Services

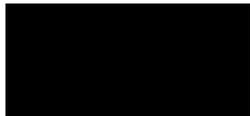
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invasion of personal privacy



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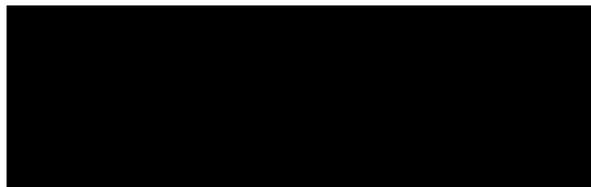
Office: California Service Center

Date: **SEP 04 2007**

[WAC 05 225 85369, as it pertains to SRC 01 221 62594]

IN RE:

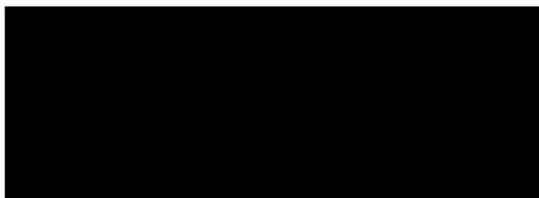
Applicant:



APPLICATION:

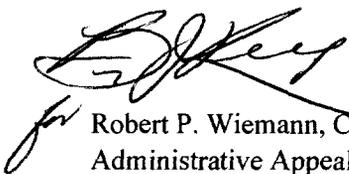
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the 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 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 claims 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 an initial TPS application on May 23, 2001, under CIS receipt number SRC 01 221 62594. The Director, Texas Service Center, denied that application, on November 15, 2002, because the applicant failed to respond within thirty days to an October 9, 2002 notice of intent to deny requesting that he submit evidence of his nationality and identity, and evidence of continuous physical presence in the United States. 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 reflects that the applicant filed a late motion to reopen in 2004. The record indicates that the motion was denied on March 16, 2006; however, the record does not contain a signed and dated copy of that denial notice.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 13, 2005, under CIS receipt number WAC 05 225 85369, and indicated that he was re-registering for TPS. The Director, California Service Center, denied that application on January 10, 2006, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, counsel reasserts that the applicant is eligible for TPS, and states that the applicant was not aware that his initial TPS application had been denied until a subsequent renewal application was denied. On appeal, counsel submits additional documentation, consisting of a photocopy of the applicant's El Salvador passport; a photo Cedula; an apartment lease, dated March 19, 2001; and, an unsigned letter from MP Construction, dated January 19, 2004, stating that the applicant has been working for the company for the past three years.

As noted above, although the record indicates that the applicant filed a motion to reopen the decision of the Texas Service Center Director to deny the initial application for abandonment, the record does not contain a signed and dated copy of that denial notice. However, as the director's denial of the initial application was based on abandonment, the AAO has no jurisdiction over this case. Therefore, the case will be remanded and the director shall consider the applicant's motion to reopen and issue a decision on that motion.

It is noted that the applicant has not submitted sufficient evidence to establish his qualifying residence and his continuous physical presence in the United States during the requisite time periods.

The case will be remanded and the director shall consider the applicant's motion to reopen and issue a decision on the motion to reopen. 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.