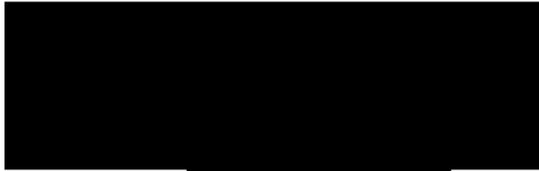




U.S. Citizenship  
and Immigration  
Services

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identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



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FILE:

[WAC 05 131 81696]

Office: California Service Center

Date: **SEP 04 2007**

IN RE:

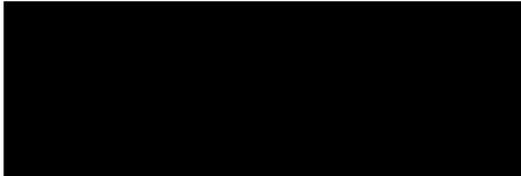
Applicant:



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 California Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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 an initial TPS application on May 16, 2001, under CIS receipt number SRC 01 211 57903. The Texas Service Center Director denied that application due to abandonment, on May 24, 2004, because the applicant failed to respond, within 12 weeks, to a request to submit a photo identification. The director noted that the request for evidence was mailed to the applicant's last known address. 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. It is noted that the applicant submitted the requested evidence, in the form of his national identification card after the director's denial notice was issued. The record, however, 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 February 8, 2005, under CIS receipt number WAC 05 131 81696, and indicated that he was re-registering for TPS. The director denied the re-registration application on April 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, counsel for the applicant re-asserts the applicant's eligibility for TPS, and states that the applicant has provided sufficient evidence of his continuous residence and his continuous physical presence in the United States during the requisite period. With his appeal, the applicant submits photocopies of various documents, including the biographic page of his passport.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

Counsel's assertion, on appeal, that the applicant has provided sufficient evidence of his continuous residence and his continuous physical presence in the United States during the requisite period, is not supported by the evidence of record. It is noted that the evidence of record pertaining to the requisite period consists only of a paystub, dated April 27, 2001. There is no other evidence in the record for the requisite period. The record does not contain sufficient evidence of the applicant's continuous residence and continuous physical presence in the United States during the requisite periods. For this additional reason, the application must be denied.

In addition, the applicant's Federal Bureau of Investigation (FBI) fingerprint results report, completed in connection with his subsequent TPS re-registration application, reflects that the applicant was arrested on April 14, 2005, by the Forsyth Co So – Communications, and charged with one count of "ASSAULT ON A FEMALE". While the applicant has furnished a copy of a document from the General Clerk of Justice, District Court Division, Twenty-first Judicial District Domestic Violence – Deferred Prosecution, the court permitted entry of domestic violence deferred prosecution in the case. The applicant was ordered to return to court on January 31, 2006, for a final review. The final court disposition is not in the record of proceeding. CIS must address this arrest in any future proceedings.

Furthermore, counsel's contention that the applicant's previous applications for TPS were approved is not correct. Counsel submits copies of the applicant's Employment Authorization documents (EAD) which were issued for the periods from August 9, 2001 to September 9, 2002; November 4, 2002 to September 9, 2003; and, from November 19, 2003 to March 9, 2005. However, the EADs were issued to the applicant as a temporary treatment benefit while his TPS applications were pending. The applicant has not been approved for TPS.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for TPS 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 failed to meet this burden.

**ORDER:** The appeal is dismissed.