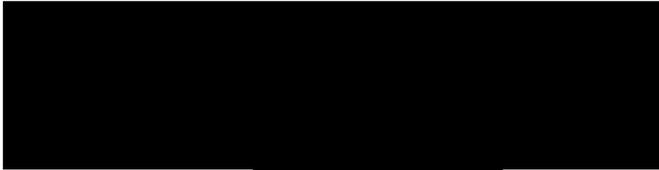


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U.S. Citizenship  
and Immigration  
Services

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FILE: [Redacted] Office: California Service Center Date: FEB 01 2008  
[WAC 05 112 74379, as it relates to  
WAC 01 166 51716]

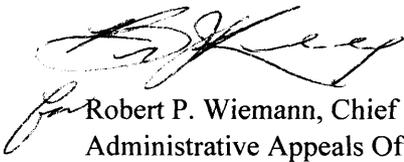
IN RE: Applicant: [Redacted]

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 California Service Center office. 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. 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 an initial TPS application on March 22, 2001, under CIS receipt number WAC 01 166 51716. The Director, California Service Center, denied the application for abandonment, on June 28, 2004, because the applicant failed to appear for fingerprinting as requested by the director in a November 25, 2003 fingerprinting notification. 8 C.F.R. § 103.2(b)(13). It is noted that the record reveals that the fingerprint notification was mailed to the applicant's last known address and was not returned as undeliverable. 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 motion to reopen. The director denied the motion on September 17, 2004, because the motion did not state new facts and was not supported by affidavits or other supporting documents.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 20, 2005, under CIS receipt number WAC 05 112 74379, and indicated that she was re-registering for TPS.

The director denied that application on June 27, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or
  - (2) During any subsequent extension of such designation if at the time of the initial registration period:

- (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
  - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
  - (iii) The applicant is a parolee or has a pending request for reparole; or
  - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

The initial registration period for El Salvadorans was from March 9, 2001 to September 9, 2002. The record reveals that the applicant filed the current application with Citizenship and Immigration Services (CIS) June 27, 2005.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he or she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

On appeal, the applicant states that she is eligible for TPS because she has been residing in the United States since February 2001, and has been continuously present in the United States since March 9, 2001. The applicant also asserts that she is eligible for late initial registration because her case before an immigration judge was administratively closed on May 23, 2002. With the appeal, the applicant submits additional evidence, including photocopies of her El Salvador birth certificate, with an English translation; an Employment Authorization Card; a California Identification Card; and, various court documents.

It is noted that the record reflects that the applicant was apprehended while attempting to enter the United States on July 8, 1998, and placed in removal proceeding. The record of proceedings contains a Form I-589, Application for Asylum and Withholding of Removal, signed by the applicant on April 14, 1999. On May 23, 2002, an immigration judge administratively closed the applicant's removal proceeding. The immigration judge's order does not indicate a final decision on the applicant's asylum application, and, therefore, the case is still considered pending. Consequently, the applicant is eligible for late TPS registration under 8 C.F.R. § 244.2(f)(2)(ii).

The record indicates that the applicant was fingerprinted on April 3, 2006 in connection with her re-registration application and the results report does not reveal any grounds of ineligibility which would preclude the applicant from receiving TPS.

However, the application cannot be approved at this time because the record reflects that the applicant has not submitted sufficient evidence to establish her nationality and identity, nor was the applicant requested to submit such documentation. The applicant has furnished a copy of her El Salvador birth certificate and an English translation; however, she has not submitted a national identity document from her country bearing a photograph and or/fingerprint. The birth certificate alone is insufficient to establish the applicant's identity and nationality under the provisions of 8 C.F.R. § 244.9(a)(1).

The director's denial of the initial application will be withdrawn; the application will be remanded for a new decision. 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 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.