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U.S. Citizenship
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FILE:



Office: California Service Center

Date:

FEB 05 2008

[WAC 05 210 84235,
as it relates to SRC 03 009 54951]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, Texas Service Center. A subsequent application for re-registration was also 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. The appeal will be sustained and the applications will be approved.

The applicant is 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 September 6, 2002, under CIS receipt number SRC 03 009 54951. The Director, Texas Service Center, denied that application due to abandonment, on April 16, 2004, because the applicant failed to appear for scheduled fingerprinting. 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. It is noted, however, that the director did not advise the applicant that he may file a motion to reopen 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 April 28, 2005, under CIS receipt number WAC 05 210 84235, and indicated that he was filing an initial TPS application. The Director, California Service Center, categorized the application as a re-registration for TPS, and denied the application on January 6, 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 states that the applicant is eligible for TPS as an El Salvadoran who has continuously resided in the United States since February 13, 2001, and has been physically present in the United States from March 9, 2001. With the appeal, counsel submits additional documents, including the biographic page of the applicant's El Salvadoran passport, and paystubs and earning statements, in an attempt to establish the applicants continuous residence and his continuous physical presence in the United States.

It is noted that the record contains a Certificate of Disposition pertaining to an arrest on October 6, 2002, for the offense of "DWI 1ST OFFENDER BAC .08," a misdemeanor, which was dismissed.¹

The record contains sufficient evidence to establish the applicant's eligibility for TPS and does not reflect any grounds that would bar the applicant from receiving TPS: the record contains sufficient evidence to establish the applicant's identity and nationality, his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the date of filing his initial TPS application, September 6, 2002. The record of proceedings reveals that the fingerprints are cleared. Specifically, an FBI fingerprint check conducted in connection with the re-registration application shows "non-ident". The record of proceedings contains a copy of the applicant's birth certificate, with English translation, and a copy of the biographic page of the applicant's El Salvadoran passport. The record contains documentation, including employment and tax records,

¹ The disposition indicates that the court deferred adjudication of guilt without entering a finding of guilt, placed the applicant on community supervision, and the case was dismissed upon the applicant's completion of community supervision.

which cumulatively establishes the requisite continuous residence and continuous physical presence. Therefore, the director's decision will be withdrawn, and the initial application will be approved.

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 approved, the appeal from the denial of the re-registration will be sustained and that application will also be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The application is reopened and the director's denial of the initial application is withdrawn. The initial application and the re-registration application are both approved. The appeal is sustained.