



**U.S. Citizenship  
and Immigration  
Services**

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FILE:



OFFICE: California Service Center

DATE:

**JAN 022008**

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INRE:

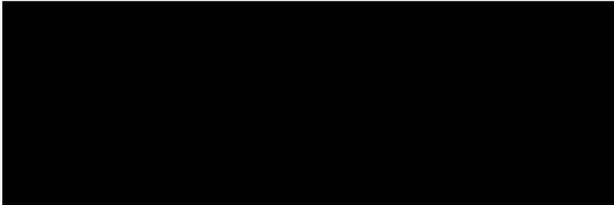
Applicant:



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 that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** An initial application was denied by the Director, Texas Service Center (TSC). The Houston, Texas, District Director subsequently approved that same application on motion. The application was then denied by the Director, California Service Center (CSC). The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office (AAO). The application is now before the AAO on appeal. The appeal will be sustained.

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 applicant filed her initial TPS application on May 14, 2001, under Citizenship and Immigration Service (CIS) receipt number SRC 01 213 56670. The TSC director denied the application on February 28, 2003, due to abandonment, because the applicant had not appeared for her required appointment to be fingerprinted.

The applicant, through counsel, filed a motion to reopen. On July 7, 2003, the Director of the Houston, Texas district office approved the TPS application as reflected by an approval stamp on that application, and a notice contained in the record. It is noted that the Director of the Houston, Texas district office did not have the authority to reopen the initial application which was denied by the TSC director, but should have forwarded the motion to the TSC for their adjudication of the motion.

The applicant filed the instant Form I-821, Application for Temporary Protected Status, as a re-registration on February 1, 2005. The director denied the application 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 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.

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.

The record reveals that the applicant subsequently was fingerprinted! and the most recent FBI criminal history response report does not indicate a criminal history. The record of proceedings 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. Therefore, the director's decision will be withdrawn and the initial application will be approved.

An alien applying for temporary protected status 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 met this burden.

**ORDER:** The director's decision is withdrawn. The appeal is sustained and the applications are approved.

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Footnote: On June 28, 2003, April 12, 2005, February 2, 2006, and May 2, 2006.