

of identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

M1



FILE: [REDACTED] Office: California Service Center Date: JAN 10 2008
[WAC 05 216 85605
as it relates to SRC 03 12255110
& SRC 01 18562370]

INRE: 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:
[REDACTED]

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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, 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 April 16, 2001, under CIS receipt number SRC 01 185 62370. The Director, Texas Service Center, denied that application due to abandonment, on May 23, 2002, because the applicant failed to respond to a March 26, 2002 request to submit a nationality identity document. 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 does not reflect that the applicant filed a motion to reopen.

The applicant filed a subsequent Form 1-821, Application for Temporary Protected Status, on April 9, 2003, under CIS receipt number SRC 03 122 55110, and indicated that he was filing an initial TPS application. The Director, Texas Service Center, denied the application on January 16, 2004, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. The record does not reflect that the applicant filed an appeal.

The applicant filed the current Form 1-821, Application for Temporary Protected Status, on May 4, 2005, under CIS receipt number WAC 05 216 85605, and indicated that he was filing an initial TPS application. The Director, California Service Center, denied the application on August 31, 2005, 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 did not receive the request for evidence. With the appeal, counsel submits additional documents, including the biographic page of the applicant's El Salvador passport.

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 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 1, 2001, to the date of filing his initial TPS application, April 16, 2001. Therefore, the director's decision will be withdrawn, and the initial application will be approved.

The director's denial of the applications for re-registration or renewal are dependent upon the adjudication of the initial application. Since the initial application is being approved, the appeal from the denial of the re-registration application will be sustained and those applications will also be approved.

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