

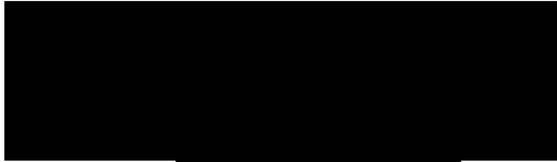
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U.S. Department of Homeland Security  
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Washington, DC 20529



U. S. Citizenship  
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Services

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FILE:



Office: California Service Center

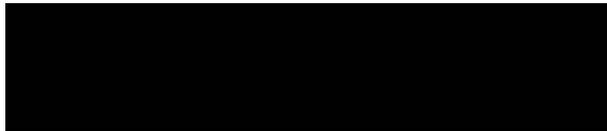
Date:

JAN 232008

[WAC 05 214 72826 as it relates to LIN 02 277 51815]

INRE:

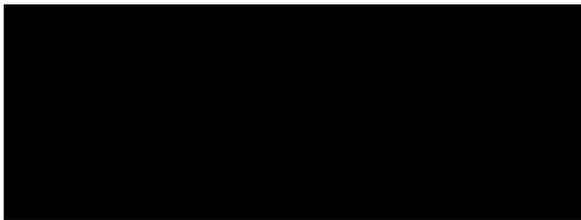
Applicant:



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

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

for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The initial application was denied by the Director, Nebraska 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. 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 a new initial TPS application on September 3, 2002, under CIS receipt number LIN 02 277 51815.<sup>1</sup> The director denied that application on March 17, 2003, because the applicant failed to report for scheduled fingerprinting. The director, therefore, considered that application abandoned. 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. The record does not reflect that the applicant filed a motion to reopen/reconsider.

The applicant filed subsequent applications, including the current Form I-821, Application for Temporary Protected Status, on May 2, 2005, under CIS receipt number WAC 05 214 72826, and indicated that he was re-registering for TPS. The director denied this application on August 16, 2005, because the applicant's initial TPS application had been denied.

However, 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 of proceedings reveals that the fingerprints are cleared. Specifically, an FBI fingerprint check conducted in connection with the re-registration application shows no derogatory information. 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 application. The record contains various documentation, including correspondences, and a photo **iii** in the form of the biographic page of the applicant's El Salvadoran passport. 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 applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden.

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<sup>1</sup> The record reflects that the applicant filed an initial TPS application on April 10, 2001, under receipt number LIN 01 16451344, that was denied on August 20, 2001, for failure to submit a photo identification. The record does not reflect that the applicant filed an appeal of that decision.

**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.