



U.S. Citizenship  
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ML

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

**JUL 24 2008**

Date:

[WAC 08 110 51685, *motion*]

[WAC 05 218 71913 as it relates to SRC 02 129 54477]

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:

[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.

Robert P. Wiemann, Director  
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 a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is currently before the AAO on a motion to reopen. The matter will be reopened. The initial application will be reopened, *sua sponte*, by the AAO. 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 March 20, 2002, under receipt number SRC 02 129 54477. The Director, Texas Service Center, denied that application for abandonment on September 27, 2004, because the applicant failed to report for fingerprinting as requested. The director noted that the fingerprinting notice was mailed to the applicant's last known address. 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 within the allotted time.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 6, 2005, under CIS receipt number WAC 05 218 71913, and indicated that he was re-registering for TPS. The Director, California Service Center, denied the re-registration application on August 16, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

It is noted that in a previous decision dated December 27, 2007, dismissing the appeal of the re-registration decision, the AAO noted that the record of proceedings indicated that the applicant had four felony convictions, and therefore was ineligible for TPS. The AAO also noted that the record reflects that the applicant was placed in proceedings (under [REDACTED], was removed from the United States on June 27, 1997, pursuant to a removal order, and on June 12, 2002, an order reinstating the prior removal order was issued after the applicant reentered the United States.

On motion, counsel correctly points out that the applicant has never been arrested, does not have a criminal conviction, was never placed in proceedings, was never removed from the United States, and did not re-enter the United States on June 12, 2002. The AAO notes that the record now reveals that the applicant was subsequently fingerprinted and the Federal Bureau of Investigation (FBI) fingerprint check conducted in connection with the re-registration application shows "non-ident". The AAO also notes that the record does not reflect any criminal grounds that would bar the applicant from receiving TPS. Therefore, the AAO hereby withdraws its December 27, 2007 decision, and will issue a new decision.

On appeal, the applicant reasserts his eligibility for TPS. It is noted that the applicant indicates on the Notice of Appeal to the Administrative Appeals Office (AAO), Form I-290B, filed September 15, 2005, that an appeal brief would be submitted within 30 days. However, the record does not reflect receipt of an appeal brief. With the appeal, the applicant submitted additional documents, including tax returns and earnings statements. Therefore, the record must be considered complete.

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 contains a copy of the applicant's passport to establish his identity and nationality, and evidence, including various employment records, earnings statements, and income tax returns, which cumulatively establishes his continuous residence and continuous physical presence in the United States during the requisite periods. 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 application will be sustained and the 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.

**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.