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U.S. Citizenship  
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Services

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FILE:



Office: California Service Center

Date:

MAR 10 2008

[WAC 05 152 78908,  
as it relates to SRC 01 252 55722]

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. 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, 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 August 13, 2001, under CIS receipt number SRC 01 252 55722. The Director, Texas Service Center, denied that application due to abandonment, on July 16, 2003, because the applicant failed to appear for scheduled fingerprinting. The director noted that the fingerprint notification was mailed to the applicant's last known address. 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 reflects that the applicant's counsel filed a late motion to reopen on September 10, 2004. However, the record does not reflect a decision on that motion.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 1, 2005, under CIS receipt number WAC 05 152 78908, and indicated that she 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 April 13, 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, the applicant states that she is eligible for late initial registration as the spouse of a TPS registrant. With her appeal, the applicant submits various additional documents in an attempt to establish her continuous residence and her continuous physical presence in the United States.

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, her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States from March 9, 2001, to the date of filing her initial TPS application, August 13, 2001. The record of proceedings shows no derogatory information. The record of proceedings contains a photo ID in the form of a Cedula, with her fingerprints. The record contains documentation, including employment and tax records, 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 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.