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U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUN 22 2005

[WAC 02 283 51276]

[WAC 01 166 50376]

IN RE:

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:

SELF-REPRESENTED

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.

Cindy M. Gomez

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The matter will be remanded for further consideration and action.

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 record indicates that the applicant filed his initial Form I-821, Application for Temporary Protected Status, on March 22, 2001. On January 24, 2002, and again on June 21, 2002, the applicant was requested to submit additional evidence to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The Notices of Intent to Deny were mailed to the applicant at his address of record, [REDACTED] but were returned to the California Service Center as undeliverable mail.

The director, therefore, denied the application on August 9, 2002, because the applicant had abandoned his application by failing to respond to two requests for additional evidence. The Notice of Decision was mailed to the applicant at the same address, but was again returned to the California Service Center as undeliverable mail.

On July 22, 2002, the applicant filed the current Form I-821, Application for Temporary Protected Status. The applicant indicated on the form that he was applying for annual re-registration after having been granted TPS. It is noted that the applicant listed a new address on the current Form I-821.

On February 24, 2004, the director denied the current TPS application. The director stated in the Notice of Decision:

USCIS records show that the applicant's Form I-821 was denied on JULY 18, 2002. Since temporary protected status has not been granted, the applicant is ineligible for re-registration under section 244 of the Act. Therefore, it is ordered by the Director of the California Service Center that the application is denied. This decision may not be appealed.

The applicant filed an appeal from the director's decision on March 15, 2004. On appeal, the applicant states that he doesn't understand why his application for TPS was denied because he never received a notice of intent to deny or a notice of denial relating to the prior Form I-821 he filed on March 22, 2001. The applicant asserts that he has submitted sufficient evidence to establish his eligibility for TPS. He submits photocopies of both the prior and the current Forms I-821 and supporting documentation; photocopies of CIS notices acknowledging receipt of both Forms I-821; and, additional evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time frames.

Since the applicant filed the current Form I-821 within the initial registration period for Salvadorans, the director should have considered the current application as a second initial filing rather than as an application for re-registration. Therefore, the director's decision will be withdrawn, and the matter will be remanded for further

consideration and action. Accordingly, the director shall consider the current Form I-821 as a second initial filing, fully adjudicate the application, and issue a new decision consistent with the foregoing.

It is noted that the record of proceeding, as it is presently constituted, does not contain sufficient evidence to establish the applicant's continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

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

ORDER: The matter is remanded for further action consistent with the above and entry of a new decision.