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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

JAN 19 2007

Date:

[WAC 02 206 52854]
[WAC 05 223 70654]

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, California 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, and the case will be remanded for further consideration and action.

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 applicant filed an initial application for TPS under receipt number WAC 02 206 52854. The director denied the initial application on May 19, 2003, after determining that the applicant had abandoned her application by failing to appear for her fingerprint appointment or request another opportunity to be fingerprinted. However, the record of proceedings reveals that the director's decision was in error. Specifically, the record reveals that the fingerprint appointment notice and the denial decision were both mailed to an outdated address. The applicant reported a new address on her Form I-765, Application for Employment Authorization, filed on September 10, 2002, under receipt number WAC 03 020 51511. The applicant listed her address on that application as [REDACTED]. The fingerprint appointment notice dated November 13, 2002, and the denial decision dated May 15, 2003, were both mailed to the applicant's former address, [REDACTED].

Both notices were returned to the California Service Center as undeliverable mail. Since the fingerprint appointment notice and the denial decision were not mailed to the correct address, the applicant was deprived of the opportunity to appear for her fingerprint appointment or to file a timely motion to reopen her case. It is noted that the applicant was subsequently fingerprinted in 2005, and no criminal record was found.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 11, 2005, and indicated that she was re-registering for TPS or renewing her temporary treatment benefits. The director denied the application on August 16, 2005, because the applicant's initial TPS application had been denied and she was not eligible for re-registration or renewal of temporary treatment benefits.

The denial of the initial application will be withdrawn; the application will be remanded for a new decision. 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 remanded, that decision will be remanded to the director for further adjudication. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS offered to Salvadorans.

It is noted that the record of proceedings, as it is presently constituted, does not contain sufficient evidence to establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

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 initial application is reopened, the director's decision is withdrawn, and the application is remanded for a new decision. The re-registration application is remanded for further action consistent with the director's new decision on the initial application.