



U.S. Citizenship
and Immigration
Services

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FILE:



Office: California Service Center

Date:

JUL 05 2007

[SRC 02 030 57535, as it relates to
[WAC 05 224 75175]

IN RE:

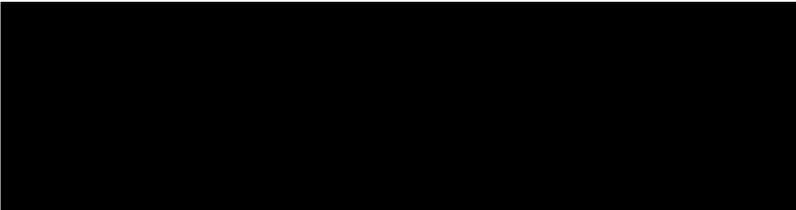
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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DISCUSSION: The applicant's temporary protected status was withdrawn by the Director, California Service Center.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 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 reflects that the applicant's initial TPS application was filed on October 15, 2001, under CIS receipt file number SRC 02 030 57535. On August 25, 2003, the Texas Service Center director denied that application due to abandonment because the applicant failed to respond to a February 7, 2003, notice of intent to deny to submit a photo identification, and evidence of her continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. 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 the current Form I-821, Application for Temporary Protected Status, on May 12, 2005, under CIS receipt number WAC 05 224 75175, and indicated that she was re-registering for TPS. The California Service Center director denied the application on June 7, 2006, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

The AAO notes that the record indicates that CIS received a response to the notice of intent to deny. Therefore, the application should not have been denied for abandonment.

It is also noted that the record contains evidence to establish the applicant's nationality and identity, and sufficient evidence to establish the requisite continuous residence in the United States and continuous physical presence.

However, the application may not be approved at this time as the applicant's Federal Bureau of Investigation (FBI) fingerprint results report reflects that the applicant was arrested by the Sante Fe Police Department, Santa Fe, NM, on August 8, 2001, and charged with "SHOPLIFTING". It is noted that the record of proceedings does not contain the final court disposition. CIS must address this arrest and any other arrest and/or conviction(s) in any future proceedings.

The director's denial of the initial application will be withdrawn; the application will be remanded, and the director shall reissue the notice of intent to deny to give the applicant the opportunity to provide final court disposition (s) for any arrests, charges, and/or convictions. 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 El Salvadorans.

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.