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MAY 18 2007

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

[WAC 05 198 74667 AS IT RELATES TO LIN 01 167 50128]

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.

*Cindy M. Homeny for*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The initial application was denied by the Director, Nebraska Service Center (NSC). 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 appeal will be sustained.

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 Form I-821, Application for Temporary Protected Status, on April 13, 2001, under receipt number LIN 01 167 50128. The NSC director denied the initial application on November 16, 2001, due to abandonment because the applicant failed to appear for a fingerprinting appointment. However, the record of proceeding, as presently constituted, does not support this decision because there is no copy of the fingerprint notice in the file. Therefore, it cannot be fully established that the notice was sent to the applicant's correct mailing address.<sup>1</sup> Furthermore, the record shows that the applicant's fingerprints were taken on May 13, 2005 and June 15, 2006, in compliance with subsequent re-registration periods. The Federal Bureau of Investigations fingerprint results reports were favorable to the applicant and indicate that she has no bars to a favorable finding of TPS. It is also noted that attorney [REDACTED] of the University of [REDACTED] stated in a letter to the NSC director on July 31, 2003, that the applicant did have her fingerprints taken, as instructed by CIS. Ms. [REDACTED] further stated that the applicant was in possession of a receipt that indicated she had appeared for fingerprinting and that the denial was in error. There is no record that the NSC director acknowledged or responded to these assertions.

Of greater import, is the fact that the NSC director's denial decision of November 16, 2001 was mailed to [REDACTED] instead of [REDACTED] [emphasis supplied] as the applicant has indicated on the application(s) filed at that time. Therefore, the denial notice issued in 2001 was mailed to the incorrect address, and thus prohibited the applicant from timely responding to the denial.

The applicant filed a re-registration application on April 16, 2005. The director denied the re-registration application on August 15, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

On appeal, the applicant states that she is unaware of any reason why her application should have been denied.

Based on the record currently before the AAO, The initial TPS application contains sufficient evidence that she meets the requirements for eligibility under TPS as follows:

- (1) Passport issued by El Salvador;
- (2) Form I-94, Arrival/Departure Record, number [REDACTED] with stamp indicating that the applicant was admitted at Los Angeles, California as a visitor with a B-2 visa on January 28, 2001 and valid

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<sup>1</sup> It is noted that the official record of proceedings is not currently available to the AAO because it is being held by the Immigration and Customs Enforcement (ICE) office in Chicago, Illinois, where the applicant is currently in removal proceedings.

- until July 27, 2001;
- (3) Birth certificate of applicant's son dated March 22, 2001, issued by the \_\_\_\_\_ in Elkhart, Indiana;
  - (4) Airline ticket showing that the applicant departed from El Salvador on January 28, 2001, and arrived at \_\_\_\_\_ in Chicago, Illinois, on the same date.

The evidence submitted, as detailed in Nos. 1 through 4, supports the applicant's claim of qualifying continuous residence and continuous physical presence.

Based on the foregoing, the applicant has established that she meets the requirements for TPS under section 244 of the Immigration and Nationality Act. Therefore, the director's decision will be withdrawn, the application will be approved, and the appeal will be sustained.

An alien applying for Temporary Protected Status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has met this burden.

**ORDER:** The director's decision is withdrawn and the appeal is sustained.