



U.S. Citizenship  
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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE **MAY 21 2007**

[WAC 06 046 70300]  
[WAC 05 203 75039]  
[WAC 01 245 53894]

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 office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
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 case will be remanded to the director for further 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 a TPS application during the initial registration period on July 9, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 245 53894. That application was approved on February 2, 2004.

The applicant subsequently filed a TPS application on April 21, 2005, under CIS receipt number WAC 05 203 75039, and indicated that she was re-registering for TPS. The director denied the re-registration application based on abandonment on September 6, 2005, because the applicant had failed to appear for fingerprinting on May 18, 2005. Within the same denial decision, the director issued a Notice of Intent to Withdraw TPS because the applicant's failure to appear for fingerprinting rendered her re-registration application incomplete and abandoned.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on November 15, 2005, under CIS receipt number WAC 06 046 70300, and indicated that this is her "first application to register for Temporary Protected Status (TPS)." The director treated the application as a re-registration application and determined that because temporary protected status had been denied, the applicant was not eligible to apply for re-registration for TPS; therefore, the director denied the application on March 23, 2006.

On appeal, counsel asserts that the applicant was previously granted TPS, she filed a timely extension for TPS in April 2005 (WAC 05 203 75039), but that the application was deemed abandoned based on the applicant's failure to take the required fingerprints. Counsel states that one of the options given the applicant was to file a new application with fee, and that in November 2005, a fully documented Form I-821 was filed, the case was accepted, and fingerprints have been taken. He further states that the present application is a new application and not a re-registration application as stated in the director's denial notice dated March 23, 2006.

The record of proceeding is devoid of any evidence to show that the applicant was issued a notification to appear for fingerprinting on May 18, 2005. However, the applicant subsequently was fingerprinted and the Federal Bureau of Investigation fingerprint results reports dated December 15, 2005 and June 17, 2006, do not reflect a criminal record that would bar the applicant from receiving TPS.

Additionally, as noted above, on September 6, 2005, the director denied the re-registration application based on abandonment, and within the same denial decision, the director issued a Notice of Intent to Withdraw TPS. The record does not contain evidence that the director had withdrawn the applicant's temporary protected status. Therefore, the director had prematurely denied the TPS application filed on November 15, 2005 (WAC 06 046 70300).

Accordingly, the director's denial decision and notice of intent to withdraw dated September 6, 2005 (WAC 05 203 75039 and WAC 01 245 53894, will be withdrawn and the case will be remanded to the director for further action. The director's denial of the present application (WAC 06 046 70300) is dependent upon the outcome 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.

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 case is remanded to the director for further action consistent with the above and entry of a decision.