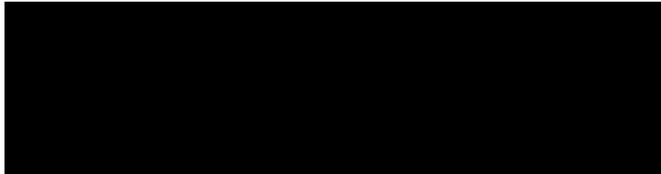


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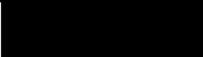
U.S. Citizenship
and Immigration
Services

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FILE:



Office: Vermont Service Center

Date:

OCT 04 2007

[EAC 06 083 51598 as it relates to WAC 02 069 57184]

IN RE:

Applicant:



APPLICATION:

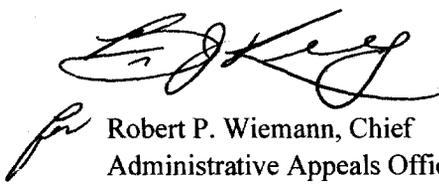
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's temporary protected status application was denied by the Director, California Service Center. A subsequent application for re-registration was denied by the Director, Vermont 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 record reveals that the applicant timely filed an initial TPS application on December 19, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 02 069 57184. The director denied that application for abandonment, on September 24, 2004, because the applicant failed to appear for scheduled fingerprinting. 8 C.F.R. § 103.2(b)(13). 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.

The applicant filed subsequent applications, including the current Form I-821, Application for Temporary Protected Status, on December 13, 2006, under CIS receipt number EAC 06 083 51598, and indicated that he was re-registering for TPS. The Director, Vermont Service Center, categorized the application as a new initial application for TPS (instead of a re-registration application) and denied the application on August 16, 2005, because the applicant failed to establish that he was eligible to file a late initial application for TPS.

The AAO notes, however, that the director's initial denial notice, dated September 24, 2004, was mailed to an incorrect address. The record reveals that the denial notice was mailed to the applicant (at his former address) at [REDACTED] however, the applicant's address of record at that time (as indicated in the fingerprinting notice) was [REDACTED]. There is, therefore, an inference that the applicant did not receive the director's denial notice. Without evidence that the applicant received the director's denial notice, there is no basis to determine whether the applicant failed to comply with the director's instructions in the denial notice.

It is noted that the record of proceedings reveals that the Federal Bureau of Investigations (FBI) fingerprint checks conducted in connection with the re-registration application show no derogatory results. However, the record 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 from March 9, 2001, to the date of filing his initial TPS application, December 19, 2001.

The director's denial of the initial application will be withdrawn; the application will be remanded, and the director shall afford the applicant an opportunity to submit the evidence to establish his eligibility for TPS. 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.