



U.S. Citizenship
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FILE: [Redacted] Office: California Service Center Date: SEP 04 2007
[Incorporating [Redacted]
[WAC 05 210 80920]

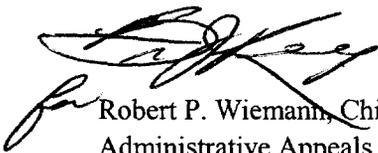
IN RE: Applicant: [Redacted]

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 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 denied by the Charlotte District Director. 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, AAO, and the case will be remanded for further consideration and action.

The applicant is stated to be 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 reveals that the applicant filed a late initial TPS application on September 22, 2003, under CIS receipt number SRC 04 003 55056. The Charlotte District Director denied that application, due to abandonment, on October 28, 2005. The director determined that the applicant had failed to appear before an Immigration Judge for her removal hearing, scheduled on November 9, 2001, and was ordered removed *in absentia* by an Immigration Judge. The director further found that the applicant had abandoned her TPS application and any relief from removal as a result of her failure to appear at the removal hearing. 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 the current Form I-821, Application for Temporary Protected Status, on April 28, 2005, under CIS receipt number WAC 05 210 80920, and indicated that she was re-registering for TPS. The director denied the re-registration application on March 22, 2006, because the applicant's initial TPS application had been denied and the applicant was not eligible to re-register for TPS.

The AAO notes that the Charlotte District Director improperly denied the TPS application for abandonment. As noted above, the director denied the application for abandonment because the applicant had been ordered removed, *in absentia*, and therefore any subsequent application for relief from removal was deemed abandoned. However, a removal order *in absentia*, does not, by itself, preclude eligibility for TPS.

It is also noted that the record does not establish the applicant's eligibility for late initial registration for TPS. The initial TPS application was filed on September 22, 2003, after the registration period for El Salvadorans; however, the applicant does not submit evidence to establish eligibility for late initial registration for TPS, nor is there any indication the applicant was provided the opportunity to submit such evidence.

The AAO notes that the evidence of record does not establish the applicant's nationality and citizenship. Although the applicant was ordered removed to Nicaragua, the applicant stated on her TPS application that she is a native and citizen of El Salvador.

The director's denial of the initial application will be withdrawn; the application will be remanded, and the director shall provide the applicant with the opportunity to submit additional evidence to establish her 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.

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.