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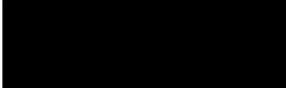
U.S. Citizenship
and Immigration
Services

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FILE:



Office: California Service Center

Date:

FEB 25 2008

[WAC 05 223 70970,
as it relates to SRC 02 177 50255]

IN RE:

Applicant:

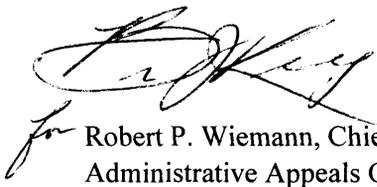


APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, Texas Service Center. A subsequent application for re-registration was also 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. The appeal will be sustained and the applications will be approved.

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 May 16, 2002, under CIS receipt number SRC 02 177 50255. The Director, Texas Service Center, determined that the applicant is a citizen and national of Honduras, and denied that application on June 6, 2002, because the applicant failed to establish eligibility for late initial registration, his continuous residence since December 30, 1998, and his continuous physical presence in the United States from January 5, 1999, to the date of filing. The record does not reflect that that the applicant filed an appeal.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 11, 2005, and indicated that he was re-registering for TPS. It is noted that with his re-registration application, the applicant submitted a statement informing the director that his initial application had been erroneously denied because his is El Salvadorian, and not Honduran, as determined by the Texas Service Center director in his denial of the initial TPS application.

However, the California Service Center director denied the re-registration application because the applicant's initial TPS application had been denied, and the applicant was not eligible to apply for re-registration for TPS.

The applicant, on appeal, states that he needs to be legal in this country, and his family in El Salvador needs help. With his appeal, the applicant submits a photocopy of the biographic page of his El Salvadoran passport, and additional documents.

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2(a), provide that an applicant is eligible for temporary protected status only if such alien establishes that he or she:

Is a national, as defined in section (101)(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;....

Pursuant to section 244(c) of the Act, an alien who is a national of a foreign state designated under subsection (b) of this section (or in the case of an alien having no nationality, is a person who last habitually resided in such designated state) and who meets the requirements of subsection (c) of this section, may be granted TPS in the United States. Further, 8 C.F.R. § provides that an alien who is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act, may, in the discretion of the director, be granted TPS. Section 101(a)(21) of the Act defines the term "national" to mean a person owning permanent allegiance to a state.

It is noted that the applicant initially submitted a Form I-821, Application for Temporary Protected Status, on which he stated that he was born in Nueva Concepcion, Chalatenango, El Salvador, and that he was a citizen of Honduras. However, with his application the applicant submitted an Application for Employment Authorization, Form I-765, and indicated that he was a citizen of El Salvador. In support of his application,

the applicant submitted a copy of his birth certificate, with English translation, reflecting that he was born in El Salvador on May 22, 1977, evidence that both his parents are El Salvador nationals; and, an El Salvador photo Cedula with fingerprints.

As noted above, the Texas Service Center director erroneously concluded that the applicant is a citizen of Honduras, and denied TPS because the applicant failed to establish eligibility for late initial registration, his continuous residence since December 30, 1998, and his continuous physical presence in the United States from January 5, 1999, to the date of filing. The applicant's claim that he is a citizen of El Salvador is well supported by official documentation, including his El Salvador passport and his photo Cedula, which he submitted to establish that he is a citizen of that country. The applicant has, therefore, established his identity and nationality as required under the provision of 8 C.F.R. § 244.9(a)(1).

It is also noted that the applicant filed his initial TPS application within the time period allowed for El Salvadorans.

The record contains sufficient evidence to establish the applicant's eligibility for TPS and does not reflect any grounds that would bar the applicant from receiving TPS: the record contains sufficient evidence to establish the applicant's identity and nationality, his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States from March 1, 2001, to the date of filing his initial TPS application, April 16, 2001. The record of proceedings does not reveal any derogatory information. The record of proceedings contains a photo ID in the form of the biographic page of the applicant's passport. In addition, the record contains documentation, including employment-related documents, such as earnings statements, which cumulatively establishes the requisite continuous residence and continuous physical presence. Therefore, the director's decision will be withdrawn, and the initial application will be approved.

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 approved, the appeal from the denial of the re-registration will be sustained and that application will also be approved.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden.

ORDER: The application is reopened and the director's denial of the initial application is withdrawn. The initial application and the re-registration application are both approved. The appeal is sustained.