

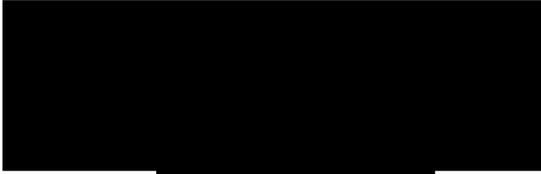
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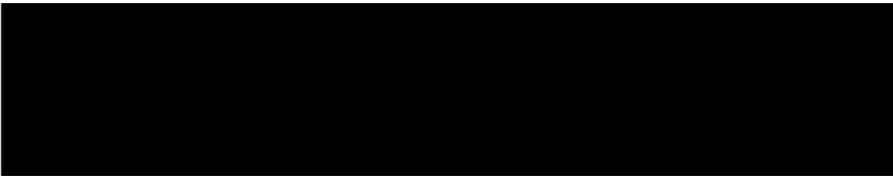
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FILE: [REDACTED] OFFICE: California Service Center Date: **JAN 29 2008**
[WAC 05 215 71636,
as it relates SRC 02 260 53939]

IN RE: Applicant: [REDACTED]

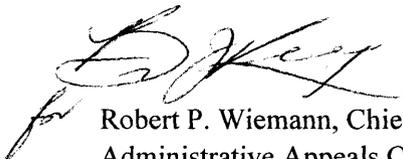
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's temporary protected status was denied by the Director, Texas Service Center. 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 case will be remanded for further consideration and 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 reveals that the applicant filed a TPS application on September 3, 2002, under receipt number SRC 02 260 53939. On January 31, 2003, the applicant was requested to provide evidence establishing his continuous physical presence in the United States from March 9, 2001, evidence establishing his continuous residence in the United States since February 13, 2001, and photo identification. On February 20, 2003, the applicant submitted an affidavit from [REDACTED] stating the applicant lived with her since February 2001, and a letter from a clinic stating that the applicant had been their patient since 2001. The Director, Texas Service Center, denied the application on May 15, 2003, after determining that the applicant had abandoned his application by failing to respond to a request to provide photo identification. On June 11, 2003, the applicant submitted additional evidence, including his cedula.

On March 25, 2004, the applicant attempted to file a motion to reopen after receiving notification that his Application for Employment Authorization (Form I-765) was being denied because his initial TPS application was denied on May 15, 2003. The record does not reflect that the applicant provided a filing fee with his motion to reopen, nor does the record reflect a decision on that motion.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 3, 2005, under receipt number WAC 05 215 71636, and indicated that he was re-registering for TPS. The Director, California Service Center, denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply to re-register for TPS.

The record reflects that the applicant did respond to the Texas Service Center director's request, and therefore, he did not abandon his TPS application. As noted by the director, the applicant provided some, though not all, of the information requested. Therefore, the application should not have been denied for abandonment, as some of the evidence requested in the notice of intent to deny was provided.

However, the application may not be approved at this time as 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 since March 9, 2001.

The case will, therefore, be remanded so that the director may enter a new decision which, if adverse to the applicant, is to be certified to the AAO for review.

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.