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FILE:



Office: California Service Center

Date:

JAN 30 2008

[WAC 05 342 70251
as it relates to SRC 03 105 55279
& SRC 01 164 62653]

IN RE:

Applicant:



APPLICATION:

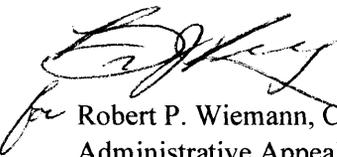
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the California Service Center. Any further inquiry must be made to that office.


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, 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 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 an initial TPS application on April 3, 2001, under CIS receipt number SRC 01 164 62653. The Director, Texas Service Center, denied that application due to abandonment, on November 12, 2002, because the applicant failed to report for fingerprinting as requested by the director. 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 reflects that the applicant filed a late motion to reopen on February 17, 2003. The record, however, does not reflect a decision on that motion.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on March 4, 2003, under CIS receipt number SRC 03 105 55279, and indicated that he was filing a re-registration application. The Director, Texas Service Center, denied the application on March 14, 2003, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. The record does not reflect that the applicant filed an appeal.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on September 7, 2005, under CIS receipt number WAC 05 342 70251, and indicated that he was filing an initial TPS application. The Director, California Service Center, categorized the application as a re-registration application, and denied the application on May 1, 2006, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, counsel reasserts that the applicant is eligible for TPS, and states that the director unfairly denied the initial applicant for abandonment. With the appeal, counsel submits additional documents.

The record, however, 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 3, 2001. The record of proceedings does not reveal any derogatory information. The record of proceedings reveals that the fingerprints are cleared. Specifically, an FBI fingerprint check conducted in connection with the re-registration application shows "non-ident". The record of proceedings contains a photo ID in the form of the biographic page of the applicant's passport. The record contains documentation, tax and employment records, 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 applications for re-registration or renewal are 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.