



U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: AUG 01 2006

[WAC 05 146 72058]
[WAC 01 241 55947]

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 office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The case will be remanded to the director for further action.

The applicant claims 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 TPS application during the initial registration period on May 30, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 241 55947. The director denied that application on August 26, 2004, after determining that the applicant had abandoned his application based on his failure to appear for fingerprinting on February 20, 2004. On September 27, 2004, the applicant filed an appeal from the denial decision. He submitted a copy of "DBI TENPRINTER Application Information Worksheet (AIW)" to establish that he did appear for fingerprinting on February 11, 2004; therefore, the case was reopened on a Service motion. The director again denied the application based on abandonment on April 7, 2005, because the applicant had failed to appear for fingerprinting on November 4, 2004. The applicant responded to the director's second decision by submitting a copy of an AIW to establish that he did appear for fingerprinting on October 29, 2004. Accordingly, the director's finding that the applicant had abandoned his initial application will be withdrawn.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 23, 2005, and indicated that he was re-registering for TPS. The director denied the re-registration application on August 16, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. As previously noted, however, the applicant had not abandoned his initial application. Since the applicant appears to have overcome the sole ground for the denial of his initial application for TPS, that decision will be withdrawn and the application will be remanded to the director for further adjudication.

Additionally, the record reveals that the applicant subsequently was fingerprinted on March 23, 2005, and again on February 3, 2006. The Federal Bureau of Investigation fingerprint results report indicates that on January 16, 2006, in Oakland, California, the applicant was arrested for "battery, spouse/ex-spouse/date/etc." Moreover, the applicant indicated on his initial TPS application that he was arrested for "driving under the influence of alcohol" in San Francisco, California, in 1995, and that he paid a fine. The final court dispositions of these arrests, however, are not included in the record of proceeding. The director shall accord the applicant the opportunity to submit the final court dispositions of these arrests and all other arrests. 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 case is remanded for appropriate action consistent with the above discussion and entry of a new decision.