



U.S. Citizenship
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Services

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DEC 18 2006

FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE:

[WAC 05 222 81618]

[WAC 01 167 50056]

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 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 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 during the initial registration period on March 22, 2001, under Citizenship and Immigration Services (CIS) receipt number WAC 01 167 50056. The director denied that application on July 12, 2004, after determining that the applicant had abandoned his application based on his failure to appear for fingerprinting on February 18, 2004. On July 26, 2004, the applicant filed a motion to reopen his case. The director dismissed the motion on March 25, 2005, because the motion was not filed within 30 days of the denial decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 10, 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.

On appeal, the applicant asserts that he did appear as scheduled for fingerprinting at the Application Support Center (ASC) in Gardena, California; however, he had a severe wound on his index finger and was thus told he could not submit his fingerprints on that date. He states that he attempted to have his fingerprints taken on multiple occasions, on February 27, 2004, on March 31, 2004, and April 17, 2004; however, on each of these occasions he was turned away due to his slowly-healing wound. He asserts that finally, on July 15, 2004, his wound had healed sufficiently and his fingerprints were successfully taken. To support his assertion, the applicant submits a copy of a receipt from the ASC, and a copy of "DBI TENPRINTER Applicant Information Worksheet (AIW)." The AIW worksheet contains a handwritten statement, "Receipt provided by ASC Gardena, CA – applicant appeared on 2/18/04 (date of appointment) but was not processed due to bad hands. Fingerprints were taken on 7/15/04." The AIW worksheet was endorsed completed on July 21, 2004. The record also reveals that the applicant subsequently was fingerprinted on July 15, 2004, on June 8, 2005, on May 1, 2006, and on June 17, 2006, and the Federal Bureau of Investigation criminal history printout does not reflect a criminal record that would bar the applicant from receiving TPS.

Accordingly, the director's finding that the applicant abandoned his initial application will be withdrawn. However, the evidence contained in the record of proceeding is insufficient to establish the applicant's qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c).

Therefore, the case will be remanded to the director for further adjudication of the application. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

The director's denial of the current application for re-registration/renewal is dependant upon the adjudication of the initial application; therefore, the current application will also be remanded to the director for further action.

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.