



U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

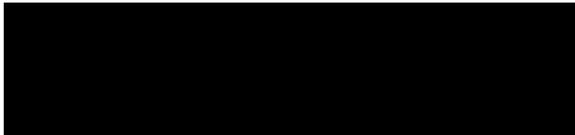
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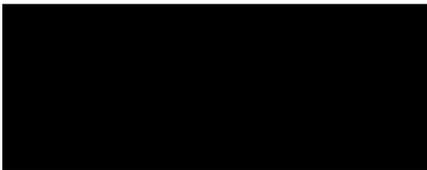
Applicant:



APPLICATION:

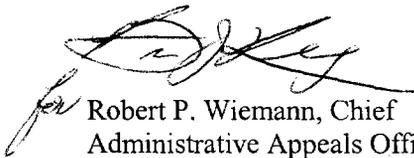
Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

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.


for 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 an initial TPS application on November 13, 2002, under Citizenship and Immigration Services (CIS) receipt number SRC 03 058 53651. The Director, Texas Service Center (TSC), denied that application based on abandonment because the applicant had failed to respond to a request for evidence.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 26, 2005, and indicated that she was re-registering for TPS. The director denied the re-registration application on October 18, 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, counsel asserts that the initial TPS application was erroneously denied and requests that the applicant's file be again reviewed and the application be approved or reopened to enable the applicant to provide any requested documentation concerning her presence in the United States since 1999. She further asserts that some of the confusion may be due to CIS assigning incorrect file numbers to the applicant's case, and in all fairness to the applicant, she should be given an opportunity to submit evidence with the assistance of an attorney. She furnished copies of: (1) the applicant's Employment Authorization Card (EAD) issued on October 29, 2001, with an incorrect file number (A71 947 761, the applicant noted that this file number is assigned to her spouse, [REDACTED]); (2) a letter from TSC, responding to a status request from the applicant on February 24, 2004, reflecting an incorrect file number (A98 577 821); (3) a Notice of Request for Evidence from TSC dated May 26, 2004, regarding the receipt of her application for employment authorization, and advising the applicant that CIS had not been able to locate a pending asylum application, and to submit a complete asylum application previously filed on her behalf; the notice contains an incorrect file number (A71 947 761).

A review of the record reveals that on January 28, 2003, the applicant was requested to submit: (1) evidence to establish continuous residence in the United States since February 13, 2001; (2) evidence to establish continuous physical presence from March 9, 2001, to the date of filing the application; (3) photo identification; and (4) a photo of her birth certificate with English translation. It is noted that the Director, TSC, issued two notices of decision to deny. Neither of the decisions was dated although CIS database indicates "denial notice sent 04022003." One notice stated that the initial application, filed on November 13, 2002, was denied based on abandonment because the applicant had failed to respond to a request on January 28, 2003, to provide a legible copy of a photo identification or a passport, and to submit evidence to show that she had resided in the United States on or before February 13, 2001. Another notice stated that the initial application, filed on September 6, 2001, was denied based on abandonment because the applicant had failed to respond to a request on January 14, 2003, to provide a legible copy of a photo identification or a passport; this notice was issued under the applicant's name with an incorrect file number (A95 072 414). The applicant responded to this decision and provided a copy of the director's notice of decision with the incorrect file number; a copy of her El Salvadoran passport and a State of North Carolina identification card; a copy of a marriage certificate without English translation; and copies of evidence in an attempt to establish residence and physical presence in the United States. However, the director neither addressed this response, nor did the director advise the applicant that a fee is required for a motion to reopen.

The case will be remanded so that the director can review the entire record of proceeding, make appropriate corrections relating to the applicant's case, including the review and/or corrections of the four file numbers assigned to the applicant, locate the Form I-821 that the director stated was received on September 6, 2001, and render a full adjudication of the application. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

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 to the director for further action consistent with the above.