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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

CONFIDENTIAL



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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: NOV 02 2006

[A70 436 554]

[EAC 01 241 50871 as it relates to WAC 05 207 79746]

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 California Service Center. Any further inquiry must be made to that office.

Cindy N. Gomez for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, Vermont Service Center (VSC). 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 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 applicant filed an initial application for TPS under Citizenship and Immigration Services (CIS) receipt number EAC 01 241 50871. The VSC Director denied the initial application on May 28, 2003, after determining that the applicant had abandoned his TPS application by failing to appear for required fingerprinting. However, the record reveals that the applicant subsequently was fingerprinted and the Federal Bureau of Investigation (FBI) criminal history printout dated July 20, 2005, does not reflect a criminal history that would bar the applicant from receiving TPS. In addition, the May 2003 denial decision on the initial application was mailed to an incorrect address. That decision was mailed to the applicant's prior address in New York, although the applicant had provided a new address in Arkansas on his application for extension of temporary treatment benefits that was stamped as received by the Texas Service Center as of October 9, 2002.

Since the applicant appears to have overcome the sole ground for denial of his initial application for TPS, the VSC Director's denial of the initial application will be withdrawn and the application will be remanded for a new decision. The California Service Center 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.

The applicant submitted evidence in an attempt to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. It is noted that the applicant submitted evidence dated in 2000 and beginning again as of April 2001, and there is a gap in the evidence covering the initial portions of the requisite periods.

The applicant indicated on his initial TPS application that he had been under immigration proceedings in Texas in 1999. He did not submit any evidence relating to those proceedings. The records of CIS reflect that the applicant has another record of proceedings under file number [REDACTED]. It is noted that this prior record of proceedings contains evidence establishing the applicant's El Salvadoran nationality.

In addition, the record of proceedings under file number [REDACTED], reflects that the applicant was previously deported to El Salvador on August 15, 1991, following the final order of the Immigration Judge, Los Fresnos, Texas, dated August 9, 1991, in which voluntary departure, withholding of deportation and asylum were denied.

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.