



U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER
[WAC 05 216 7480 as it relates to
[WAC 02 230 53901]

Date: APR 25 2007

IN RE: Applicant: [REDACTED]

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.

Cindy M. Homen
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, California Service Center. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office. 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 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 applicant filed an initial application for TPS during the initial registration period under receipt number WAC 02 230 53901. The applicant's fingerprint results report revealed the following offenses:

1. On March 15, 1990, the applicant was arrested in Hollister, California, and charged with attempt to commit murder.
2. On February 6, 1992, the applicant was arrested in Hollister, California, and charged with petty theft.

On February 27, 2003, the applicant was requested to provide the final court dispositions of all arrests since his arrival in the United States. The record does not contain a response from the applicant. The director denied the initial application on July 11, 2003, after determining that the applicant had abandoned his application by failing to respond to a request for additional evidence. On September 26, 2003, the applicant filed a motion to reopen the case. On motion, the applicant stated that he never received the request for additional evidence. The applicant explained that he had been homeless for a period of time and relied on a community service organization to ensure that he received any correspondence regarding his TPS application. The director dismissed the motion as untimely filed on February 24, 2004.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 4, 2005, and indicated that he was applying for re-registration or renewal of his temporary treatment benefits.

The director denied the application on August 29, 2005, because the applicant's initial TPS application had been denied and he was not eligible for re-registration or renewal of his temporary treatment benefits.

On appeal, the applicant explains that he was homeless for an extended period of time during the processing of his initial TPS application. He states that the notice was mailed to him in care of Resources for Independent Living (RIL), a homeless advocacy group that was attempting to assist him in finding stable employment and a place to live, but RIL did not forward the notice to him in a timely fashion. The applicant further states that the denial decision dated July 11, 2003, was also forwarded to RIL, and he didn't receive a copy of the notice in time to file a timely motion to reopen the case. The applicant submits a letter dated September 12, 2003, from [REDACTED] Independent Living Skills Specialist, Resources for Independent Living, in Sacramento, California, stating that she had been assisting the applicant for the past three years. [REDACTED] explains that the applicant was not receiving mail on time during his transition from homelessness to a stable residence. She states that, due to agency policy, she was unable to continue receiving the applicant's mail at her office, and that prevented him

from responding to the request for additional evidence and filing a motion to reopen in a timely manner. [REDACTED] states that the applicant now has stable employment and a shared rental apartment, is enrolled in studying English, and faithfully attends Alcoholics Anonymous support group meetings. The applicant also provides court documents reflecting the final court dispositions of the offenses detailed in Nos. 1 and 2 above. The charge detailed in No. 1 was dismissed in the Superior Court of California, County of Sacramento, on May 3, 1990, because the district attorney was unable to proceed with the case. The applicant was convicted in the San Benito Superior Court, State of California, on February 6, 1992, on one count of petty theft in violation of section 490.1 PC, an infraction.

The applicant's circumstances in 2003 have been taken into consideration, and it is concluded that the applicant's explanation for his failure to respond to the request for additional evidence and his failure to file a timely motion to reopen his initial TPS application is reasonable. Furthermore, the applicant has provided evidence to establish that he has only been convicted of one infraction. Therefore, the sole ground for denial of the application has been overcome.

The record of proceedings 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. Therefore, the director's decision will be withdrawn and the initial application will be approved.

The 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 approved, the appeal from the denial of the re-registration will be sustained and that application will also be approved.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has met this 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.