



U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: APR 27 2007

[WAC 05 204 70827]

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 an initial TPS application on September 11, 2002, under Citizenship and Immigration Services (CIS) receipt number EAC 03 018 52877. The Director, Vermont Service Center (VSC), originally denied the initial application on March 3, 2004, after determining that the applicant had abandoned his application based on his failure to appear for fingerprinting on June 20, 2003. The applicant responded on March 22, 2004, and submitted evidence that he did appear for fingerprinting on that date. The VSC director reopened the case and issued a Notice of Intent to Deny (NOID) dated November 25, 2005, requesting that the applicant submit evidence to establish continuous residence and continuous physical presence during the requisite period. The NOID was mailed to the applicant's previous address; therefore, the case was reopened and another NOID was issued on April 10, 2006. The VSC director determined that the evidence furnished by the applicant in response to the NOID was insufficient to establish residence and physical presence during the requisite period and denied the application on July 26, 2006. On August 24, 2006, the applicant filed an appeal from the denial decision. That appeal will be addressed in a separate decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 22, 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 requests reconsideration because he did submit evidence to prove that he is eligible for TPS. He submits additional evidence in an attempt to establish continuous residence and continuous physical presence in the United States.

As noted above, the denial of the applicant's initial TPS application on March 3, 2004, was reopened by the VSC director on November 25, 2005, and the initial application was ultimately denied on July 26, 2006. The TPS re-registration application was prematurely denied by the CSC director on August 16, 2005. Therefore, the case will be remanded to the CSC director for further adjudication and action consistent with the decision on the initial TPS application. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS offered to 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.