



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

*MI*



FILE:



Office: California Service Center

Date: APR 30 2007

[WAC 05 216 72939]

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:



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, Texas Service Center. 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 record reveals that the applicant filed an initial TPS application on July 5, 2002, under CIS receipt number SRC 02 229 54124. The Texas Service Center director denied the application for abandonment, on September 27, 2004, because the applicant failed to respond, within 90 day, to a December 10, 2002, request for evidence. A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen under 8 C.F.R. § 103.5 within 30 days of the denial decision. The record does not reflect that the applicant filed a motion to reopen.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 4, 2005, under CIS receipt number WAC 05 216 72939, and indicated that he was re-registering for TPS.

The director denied that application on May 26, 2006, because the applicant's prior TPS application had been denied and the applicant was not eligible to re-register for TPS.

On appeal, counsel asserts that the applicant is eligible for TPS as the applicant applied for TPS in July 2002. With the appeal, in an attempt to establish the applicant's continuous residence in the United States and his continuous physical presence, counsel submits, on the applicant's behalf, photocopies of:-

- The biographic page of his El Salvador passport;
- An untranslated document (in Spanish);
- Three apartment leases, one dated in 2005, and two in 2004;
- Numerous invoices and receipts, dated in 2004, 2005, and 2006;
- A check written to the applicant from [REDACTED], dated October 17, 2003;
- A check written to the applicant from [REDACTED] dated April 13, 2001;
- A U.S. Postal Service mail receipt, dated in July 2002;
- Two cash receipts, dated October 3, 2002, and January 12, 2004, respectively; and,
- Two Form 1099-Misc, one for 2002, and one for 2003.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The initial denial for abandonment was, however, in error. As noted above, the Texas Service Center Director denied the initial application because of lack of response to a request for additional evidence. However, the record of proceedings contains a timely response to the request for evidence. The record reflects that on January 3, 2003, in his response to the request for evidence, the applicant submitted evidence in the form of:

1) an unsigned employment reference letter from Richard Morant, dated December 26, 2002; 2) three original pay-check stubs, dated in 2001; 3) a photocopy of the biographic page of his El Salvador passport; and, 4) his El Salvador birth certificate in Spanish. As the initial denial was for abandonment, there is no indication that the Texas Service Center director considered the evidence submitted in response to the request for evidence in the denial decision although the applicant complied with the director's instructions in the request for evidence.

The director's denial of the initial application will be withdrawn; the case will be remanded and the director shall consider all of the record to determine whether the applicant provided necessary evidence to establish his eligibility for TPS.

The director's denial of the initial application will be withdrawn; the application will be remanded for a new decision. 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 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 offered to Salvadorans.

It is noted that the applicant's Federal Bureau of Investigation (FBI) fingerprint results report reflects that the applicant was arrested:-

1. On June 7, 2002, by the Sheriff's Office, Houston, Texas, and charged with: "OWNER KNOWINGLY ALLOWS VEH TO DISPLAY FIC CER," and, a conviction on June 10, 2002;
2. On December 12, 2003, by the Bellaire Police Department, Bellaire, Texas, and charged with: "FAIL TO IDENTIFY GIVING FALSE/FICTICIOUS INFO," and, a dismissal on January 14, 2004; and
3. On March 8, 2005, by the Sheriff's Office, Houston, Texas, and charged with: "CRIMINAL TRESPASS," and, a conviction on March 10, 2005.

The AAO notes that the final court dispositions for these arrests are not in the record of proceeding. CIS must address these arrests and any convictions in any future proceedings.

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.