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U.S. Citizenship
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Services

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DEC 04 2007

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

[WAC 05 218 76656 as it relates to SRC 01 224 68138]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, Texas Service Center (TSC). A subsequent application for re-registration was denied by the Director, California Service Center (CSC), and is currently before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, AAO, and the case will be remanded for further consideration and 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 applicant filed an initial application for TPS under Citizenship and Immigration Services receipt # SRC 01 224 68138 which was denied by the TSC Director because the applicant had abandoned his application by failing to respond to a May 7, 2004 notification requiring him to appear for fingerprinting. However, the record does not contain a copy of the notice referred to by the director.

The applicant filed the current application on May 6, 2005, and indicated that he was re-registering for TPS.

The CSC Director denied the re-registration application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

In this case, the applicant has not previously been granted TPS because he did not appear for fingerprinting. However, the record shows that his fingerprints were processed on September 21, 2000 because of his arrest by the U.S. Border Patrol in Del Rio, Texas, and again on June 24, 2005 and on April 21, 2006 based upon TPS processing. It is noted that an extra set of his fingerprints has resided in his file since December 8, 1997.

The TSC Director's denial of the initial application will be withdrawn; the application will be remanded for a new decision. The CSC 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, the current decision will also be remanded to the director for further review pursuant to the new decision on the initial application. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

Although not addressed by the director, On September 21, 2000, the applicant was encountered by Border Patrol Agents shortly after having made an illegal entry into the United States. He initially claimed to be a Mexican citizen, but was believed to be from Central America. He was afforded the right to speak with the Mexican consulate, who determined him not to be a Mexican citizen. He then admitted to being an El Salvadorian citizen and to being illegally in the United States. On September 22, 2000, the applicant was convicted of a violation of Section 275, Entry of Alien at Improper Time or Place; Misrepresentation and Concealment of Facts, of the Immigration and Nationality Act, [8 U.S.C. 1325], by a U.S. Magistrate Judge of the United States District Court of the Western District of Texas, Del Rio Division, Case Number: [REDACTED]

[REDACTED] and sentenced to serve sixty days in jail (a misdemeanor). Furthermore, the applicant's Federal Bureau of Investigation fingerprint results report shows that on December 25, 2005, he was arrested by the Dallas Police Department in Texas, and charged with driving with in invalid license. However, the final court disposition of this arrest is not included in the record of proceeding.

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

ORDER: The initial application is reopened, the director's decision is withdrawn and the application is remanded. The re-registration application is remanded for further action consistent with the director's new decision on the initial application.