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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
[WAC 05 215 70902 –
as it relates to
SRC 01 158 56723]

OFFICE: California Service Center

DATE:

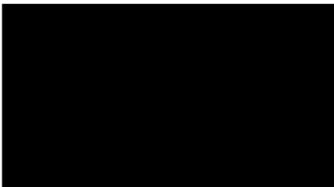
DEC 14 2007

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:



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 initial application was denied by the Director, Texas Service Center (TSC). The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office (AAO). The TSC Director's decision will be withdrawn and the application will be approved. A subsequent application was denied by the Director, California Service Center (CSC), and is currently before the AAO on appeal. The appeal will be sustained and the application 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 record shows that the applicant filed an initial Form I-821, Application for Temporary Protected Status, at the TSC on March 28, 2001, during the initial registration period for El Salvadoran nationals [SRC 01 158 56723]. The TSC Director denied the initial application on the ground of abandonment on April 21, 2003, after the applicant failed to appear for a scheduled appointment to be fingerprinted. The applicant filed a motion to reopen/reconsider on October 16, 2003, which was dismissed by the TSC Director on October 23, 2003, on the ground that it was not timely filed.

On May 3, 2005, the applicant filed his current Form I-821 with the CSC [WAC 05 215 70902], where it was treated as a late initial application. The applicant was fingerprinted on July 6, 2005, which resulted in a report by the Federal Bureau of Investigation (FBI) that the applicant had been arrested by the Police Department in Dallas, Texas, on June 11, 2000, and charged with three criminal offenses. On October 29, 2005, the CSC requested the applicant to submit evidence that he was eligible for late TPS registration under one of the qualifying criteria enumerated at 8 C.F.R. § 244.2(f)(2) as well as a certified copy of the final court disposition of the three criminal charges against the him connected with the arrest on June 11, 2000. After the applicant failed to respond within the requisite 60 days, the CSC Director denied the application on February 27, 2006, on the grounds that the applicant had failed to establish that he was eligible for late TPS registration and failed to provide the final court disposition of any and all arrest(s).

The applicant filed a timely appeal, along with supporting documentation, including certified copies of court records from the County Criminal Court in Dallas, Texas, which confirm that the applicant was convicted on June 30, 2000, of the misdemeanor offense of driving while intoxicated, committed on June 11, 2000, and was sentenced to 150 days in jail. The record also includes a memorandum from the Texas Fraud Detection Unit of Citizenship and Immigration Services (CIS) indicating that the applicant has a Texas State Criminal History Record which reveals that the other two charges resulting from the arrest on June 11, 2000, were dropped by the Dallas Police Department. Thus, the documentation of record shows that the applicant was convicted of one misdemeanor offense as a result of his arrest on June 11, 2000. Under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a), an alien is not eligible for TPS if (s)he has been convicted of any felony or two or more misdemeanors committed in the United States. Since the record shows that the applicant has been convicted of only one misdemeanor committed in the United States, he is not ineligible for TPS under the foregoing statutory and regulatory provisions. Accordingly, that ground of denial has been overcome.

As for the other ground of denial – late initial registration – it was previously noted that the applicant's original Form I-821 was filed during the initial registration period for El Salvadoran nationals in March 2001. The denial of that application on the ground of abandonment has been remedied by the applicant's fingerprinting after he filed the current application in 2005.

Thus, all of the grounds of denial cited by the TSC Director and the CSC Director in their denials of the first and second TPS applications have been overcome. Furthermore, the documentation of record – including earnings statements dating from January to June 2001 and the subsequent years of 2002-2005; federal income tax returns for the years 2001-2003; apartment lease contracts from the years 2003 and 2004; and utilities bills from 2001, 2002, and 2004 – establishes that the applicant has been continuously physically present in the United States since March 9, 2002, and continuously resident in the United States since February 13, 2001, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(b) and (c).¹ The record of proceedings does not reflect any grounds that would bar the applicant from receiving TPS.

Accordingly, the initial application will be reopened, *sua sponte*, the TSC Director's decision withdrawn, and the application will be approved. The CSC Director's denial of the subsequent TPS application will also be withdrawn, the appeal sustained, and the application approved.

An alien applying for TPS 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 that burden.

ORDER: The initial application [SRC 01 158 56723] is reopened *sua sponte*. The director's denial decision of April 21, 2003, is withdrawn. The application is approved.

The appeal of the director's decision of February 27, 2006, denying the current application [WAC 05 215 70902], is sustained. The application is approved.

¹ The applicant was previously deported from the United States on November 3, 2000, pursuant to a Warrant of Removal/Deportation issued by the District Director in Dallas, Texas, on September 26, 2000, but states that he re-entered the United States without inspection near Brownsville, Texas, on December 27, 2000.