



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: FEB 16 2007

[WAC 02 040 55834]

[WAC 05 204 80154]

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:

[REDACTED]

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, California 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 claims to be 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 under receipt number WAC 02 040 55834. The director denied the initial application on April 8, 2004, after determining that the applicant had abandoned his application by failing to respond to a request for additional evidence dated December 2, 2003. However, the record of proceedings reveals that the director's decision was in error. Specifically, the record reveals that the request for additional evidence was not sent to the applicant's most current address. The request for additional evidence was mailed to the applicant's former address, "[REDACTED]". The applicant reported a new address on his Form I-765, Application for Employment Authorization, filed with the California Service Center on September 17, 2003, "[REDACTED]". Since the request for additional evidence was not sent to the correct address, it cannot be concluded that the applicant abandoned his application by failing to respond to the request for additional evidence.

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 application on June 30, 2005, because the applicant's initial TPS application had been denied and he was not eligible for re-registration.

On appeal, the applicant states that he never received the request for additional evidence because he had moved from California to New York. It is noted that the record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, from "[REDACTED]". However, "[REDACTED]" is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the decision will be furnished only to the applicant and to his attorney of record, "[REDACTED]".

The 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 record of proceedings, as it is presently constituted, does not contain sufficient evidence to establish the applicant's nationality and identity or his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

It is further noted that the applicant's 2006 Federal Bureau of Investigation (FBI) fingerprint results report revealed that the applicant was arrested in Los Angeles, California, on January 20, 2003, and charged with vandalism causing at least \$400 in damage. The director shall provide the applicant with an opportunity to submit the final court disposition of this arrest.

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.