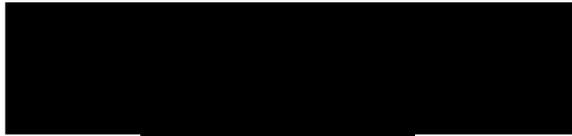


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prevent clearly unwarranted
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U.S. Citizenship
and Immigration
Services

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JUN 04 2007

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

[WAC 01 190 50537 as it relates to
[WAC 05 216 81715]

IN RE:

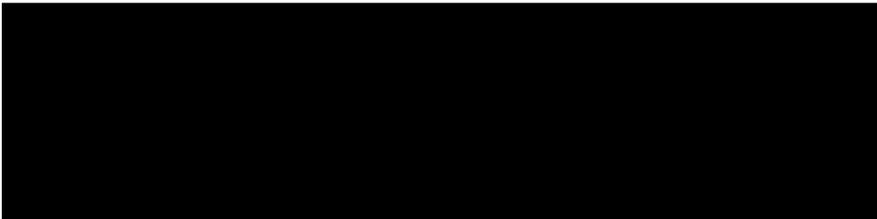
Applicant:



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.

Cindy M. Gomez
for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, California Service Center. The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office, and the application will be approved. 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 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 applicant filed an initial application for TPS during the initial registration period under receipt number WAC 01 190 50537. The director denied the initial application on August 9, 2004, after determining that the applicant had abandoned his application by failing to appear for a fingerprint appointment or request another opportunity to be fingerprinted. On October 12, 2004, the applicant filed a motion to reopen the case. The director dismissed the motion as untimely filed on October 27, 2004.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 4, 2005, and indicated that he was applying for re-registration or renewal of his temporary treatment benefits. The director denied the application on August 16, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible for re-registration or renewal of his temporary treatment benefits.

On appeal, the applicant's representative states that the applicant's failure to file a timely motion to reopen his case was due to an error by the United States Postal Service (USPS). The representative explains that the USPS mistakenly routed the denial decision to another individual, [REDACTED] and the notice was returned to Citizenship and Immigration Services (CIS) with an address label reflecting the address of [REDACTED] rather than the applicant's address. The representative states that by the time the applicant received the denial decision from his neighbor, it was too late to file a timely motion to reopen. The record contains the following evidence:

1. a photocopy of a CIS mailing envelope postmarked August 11, 2004, marked "Return to Sender, [REDACTED] Redwood City, CA 94001-2996;" and,
2. a photocopy of CIS correspondence addressed to [REDACTED] Redwood City, CA 94061-2996," instructing the applicant to complete an AR-11 change of address form and send it to the Department of Homeland Security, Change of Address, London, Kentucky."

The denial decision dated August 9, 2004 was addressed to the applicant at his address of record, [REDACTED] Redwood City, CA 94063." It appears that the USPS incorrectly returned the denial decision to the California Service Center with a forwarding address belonging to [REDACTED] rather than delivering the denial decision to the applicant's address, which had not changed. The director's decision dismissing the motion to reopen was incorrectly addressed to the applicant at [REDACTED] Redwood City, CA 94061-2996," rather than to the applicant's correct address, [REDACTED] Redwood City, CA 94063."

The applicant has submitted sufficient evidence to establish that he did not abandon his initial TPS application. Furthermore, the applicant was subsequently fingerprinted in connection with the current re-registration application, and no criminal record was found. The applicant has overcome the sole ground for denial of his initial TPS application.

The record of proceedings contains sufficient evidence to establish the applicant's eligibility for TPS and does not reflect any grounds that would bar the applicant from receiving TPS. Therefore, the director's decision will be withdrawn and the initial application will be approved.

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 approved, the appeal from the denial of the re-registration will be sustained and that application will also be approved.

ORDER: The application is reopened and the director's denial of the initial application is withdrawn. The initial application and the re-registration application are both approved. The appeal is sustained.