



U.S. Citizenship
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Services

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FILE:



[WAC 05 228 76943]
[WAC 02 232 51832]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: **MAY 23 2007**

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 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, California Service Center, and is now before the Administrative Appeals Office on appeal. The case will be remanded to the director for further action.

The applicant claims to be 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 record reveals that the applicant filed a TPS application during the initial registration period on July 10, 2002, under receipt number WAC 02 232 51832. The director denied that application on October 24, 2003, after determining that the applicant had abandoned his application based on his failure to appear for fingerprinting on September 12, 2002.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 16, 2005, and indicated that he was re-registering for TPS.

The director denied the re-registration application on August 16, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, the applicant asserts that on September 24, 2003, he received notice that his application for adjustment of status had been denied, although he did not apply for adjustment of status, due to his failure to appear for fingerprinting, and that on the same day, September 24, 2003, he also received a notice stating that his TPS application had been reopened. To support his claim, the applicant submits: (1) a copy of Form I-797C, Notice of Action, regarding his initial TPS application (Form I-821) dated September 22, 2003, from the California Service Center (CSC) advising the applicant that his "application for adjustment to permanent resident status has been denied due to the failure to appear for fingerprinting;" and (2) a copy of Form I-797C, Notice of Action, regarding his initial TPS application (Form I-821), also dated September 22, 2003, from the CSC, advising the applicant that, "after review, we have reopened the above application or petition, or reconsidered this decision previously issued." The applicant further asserts that on September 30, 2003, he called the Customer Service number to explain the confusion of the notices, that he had never received any notice to appear for fingerprinting, and that although he had filed a change of address on July 15, 2003, the Service Center keeps sending documents and notices to his old address.

A review of the record of proceeding reveals the following:

1. A fingerprint notification was issued on July 26, 2002, requesting that the applicant appear for fingerprinting at the Van Nuys, California, immigration office on September 12, 2002. The notice was mailed to the applicant's most recent address at that time [REDACTED]

2. On February 13, 2003, a Notice of Intent to Deny was issued requesting that the applicant submit: (1) evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application; and (2) evidence to establish his identity. The applicant responded on March 19, 2003, and submitted evidence in an attempt to establish residence and physical presence in the United States.

3. On September 23, 2003, a Form I-797C was issued advising the applicant that his application for adjustment to permanent resident status had been denied due to his failure to appear for fingerprinting. Also on September 23, 2003, another Form I-797C was issued advising the applicant that his TPS application had been reopened. Both notices were mailed to the applicant's former address ([REDACTED])

[REDACTED]. The record of proceeding contains correspondence and applications, as early as July 23, 2003, listing the applicant's address as [REDACTED]

4. On October 24, 2003, the CSC director denied the initial TPS application after determining that the applicant had abandoned his application based on his failure to appear for fingerprinting on September 12, 2002. The notice was mailed to the applicant's former address [REDACTED]

As noted above, the record of proceeding contains correspondence and applications, as early as July 23, 2003, listing the applicant's address as [REDACTED]. The director, however, continues to mail notices to the applicant at his former address [REDACTED], including the director's notice of denial based on abandonment dated October 24, 2003.

Accordingly, the director's finding that the applicant abandoned his initial application will be withdrawn, and the case 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 El Salvadorans.

It is noted that the record indicates that the applicant subsequently was fingerprinted and the Federal Bureau of Investigation fingerprint results reports dated May 24, 2005 and April 26, 2006, do not reflect a criminal record that would bar the applicant from receiving TPS. However, the record of proceeding contains insufficient evidence to establish that the applicant has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Additionally, although the record of proceeding contains an El Salvadoran birth certificate and English translation, the certificate was not accompanied by photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1), and as requested by the director on February 13, 2003.

The director's denial of the current application for re-registration/renewal is dependant upon the adjudication of the initial application; therefore, the current application will also be remanded to the director for further action.

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 case is remanded for appropriate action consistent with the above discussion and entry of a new decision.