



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: California Service Center

Date: **MAY 31 2007**

[WAC 05 216 78266 as it relates to WAC 01 212 51578]

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:

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.

Cindy M. Gomez
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, Texas 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, AAO. The appeal will be sustained and the applications 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 reveals that the applicant filed an initial TPS application on May 10, 2001, under receipt number WAC 01 212 51578. The director denied that application, on March 17, 2004, because the applicant failed to respond to a request for evidence to establish her eligibility for TPS. The director noted that the applicant failed to respond to a request for additional evidence (RFE), dated March 2, 2004, wherein the director requested a photo identification to establish the applicant's identity. The director also noted that the RFE was returned as undeliverable, although the request was mailed to the applicant's last known address. The director, therefore, considered that application abandoned. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed; however, an applicant may file a motion to reopen under 8 C.F.R. § 103.5 within 30 days of the denial decision. The record does not reflect that the applicant filed a motion to reopen.

However, the record of proceedings reveals that although the applicant submitted a photo identification with her initial TPS application, the director requested a photo identification and did not specify that the photo identification requested was to establish the applicant's nationality. With the appeal the applicant submits copies of the following:

- a photocopy of the biographic page of her passport issued on February 13, 2001, in Los Angeles, California;
- her high school report card for a portion of 2000;
- her high school identification, which appears to be an unclear photocopy of the same high school ID card issued by the ██████████ High School for the 2000-2001 school year;
- a Six-Flags photo season pass ID, both of which accompanied her initial TPS application;
- a Van Buren School District, California, Registration Form, indicating an October 8, 2001 enrollment date; and,
- 3 EAD cards showing validity from September 17, 2001, through March 9, 2005.

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 applicant filed the current Form I-821, Application for Temporary Protected Status, on May 4, 2005, under receipt number WAC 05 216 78266, and indicated that she was re-registering for TPS.¹ The director denied this application on August 16, 2005, because the applicant's initial TPS application had been denied.

¹ The applicant also filed re-registration applications on December 24, 2002, and September 17, 2003.

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 this application will also be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

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