



U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **NOV 29 2007**
[WAC 01 166 53439]
[WAC 05 201 70065]

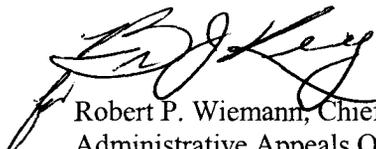
IN RE: Applicant: [REDACTED]

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. The application for re-registration was also denied by the Director, California Service Center (CSC), and a subsequent appeal was rejected by the CSC director. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The motion will be granted, the case will be reopened, *sua sponte*, and the application will be approved.

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 director denied the initial TPS application on September 24, 2004, after determining that the applicant had abandoned his application by failing to appear for fingerprinting on March 9, 2004. The applicant did not file a motion to reopen within 30 days from the date of the denial.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 12, 2005, and indicated that he was re-registering for TPS. The director denied the re-registration application on September 3, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. The director rejected the appeal on January 23, 2006, after determining that the appeal was untimely filed on October 26, 2005, and the appeal did not meet the requirements of a motion to reopen or reconsider pursuant to 8 C.F.R. § 103.5(a)(2) and (3).

A motion to reopen was filed on March 27, 2006. Counsel asserts that the applicant timely filed his appeal (Form I-290B) and had requested additional time to file a brief as the applicant had requested a copy of his immigration file pursuant to the Freedom of Information Act (Form G-639). However, the applicant received a letter from the Citizenship and Immigration Services (CIS) dated October 5, 2005, regarding the alleged filing of an incorrect fee for the Form I-290B, and that the applicant resubmitted the Form I-290B with the correct fee (received at the Service Center on October 26, 2005). Counsel further asserts that the applicant timely submitted the appeal with a fee of \$110 on September 5, 2005, and that the CIS erroneously rejected the Form I-290B on the basis of the incorrect fee. The Service Center provided notice to the applicant on October 5, 2005, indicating that the fee for the Form I-290B had increased to \$385 and was no longer \$110; however, according to Form G-1055, U.S.C.I.S. Fee Schedule (copy enclosed), the fee increase became effective on October 26, 2005. Counsel states that the applicant merits a favorable exercise of discretion because he properly complied with all of the Service's registration requirements, and also complied with his fingerprint appointments.

The record indicates that the applicant subsequently was fingerprinted and the Federal Bureau of Investigation fingerprint results reports dated May 26, 2005 and April 24, 2006, do not reflect a criminal record that would bar the applicant from receiving TPS. The applicant, therefore, has overcome the sole ground for the denial of his initial application for TPS. The record of proceeding contains sufficient evidence to establish the applicant's eligibility for TPS and also does not reflect any grounds that would bar the applicant from receiving TPS. Additionally, the applicant has furnished sufficient evidence to establish 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). 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 and motion from the denial of the re-registration will be sustained and that application will also be approved.



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