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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: California Service Center

Date:

FEB 04 2008

[WAC 05 225 76630,
as it relates to WAC 01 184 56678]

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 California Service Center. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "R. Wiemann".

for 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 also 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. 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 April 19, 2001, under CIS receipt number WAC 01 184 56678. The director denied that application due to abandonment, on June 7, 2004, because the applicant failed to appear for scheduled fingerprinting. 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.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 13, 2005, under CIS receipt number WAC 05 225 76630, and indicated that she was filing an initial TPS application. The director categorized the application as a re-registration for TPS, and denied the application on April 6, 2006, 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 states that she never intended to fail to appear for fingerprinting because through no fault of hers, she did not receive the fingerprinting notification. The applicant further states that her address was changed, and that she had notified CIS of her new address. With her appeal, the applicant submits copies of two change of address forms, together with mail receipts.

The record, however, 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: the record contains sufficient evidence to establish the applicant's identity and nationality, her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States from March 1, 2001, to the date of filing her initial TPS application, August 13, 2001. The record of proceedings reveals that the fingerprints are cleared. Specifically, an FBI fingerprint check conducted in connection with the re-registration application shows "non-ident". The record of proceedings contains a copy of the applicant's birth certificate with English translation, and the biographic page of the applicant's passport. The record also contains documentation, including tax records and immunization records for the applicant's child. This documentation cumulatively establishes the requisite continuous residence and continuous physical presence. 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.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant 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 application are both approved. The appeal is sustained.