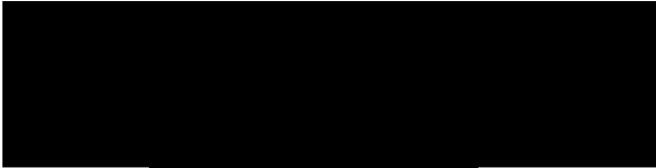




U.S. Citizenship
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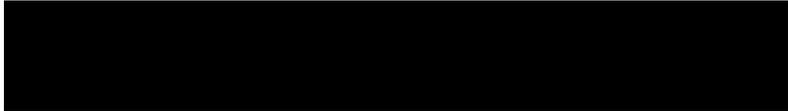
Office: California Service Center

Date: JAN 17 2008

[WAC 05 111 81634,
as it relates to SRC 04 004 51483]

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's temporary protected status 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, Administrative Appeals Office, and the case will be remanded for further consideration and action.

The applicant is stated to be 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 a late initial TPS application on September 23, 2003, under CIS receipt number SRC 04 004 51483. The Director, Texas Service Center, denied the application due to abandonment, on January 20, 2004. The director noted that the applicant had failed to respond, within 30 days, to a December 12, 2003, notice of intent to deny requesting that the applicant submit evidence to establish his eligibility for late initial registration for TPS. However, the record further reveals that also on December 12, 2003, the director had approved the applicant's TPS application, and issued an approval notice to the applicant.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 15, 2005, under CIS receipt number WAC 05 111 81634, and indicated that he was re-registering for TPS. The Director, California Service Center, denied the re-registration application, on July 22, 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 record of proceeding, in this case, confirms (as counsel points out on appeal) that at the time the applicant filed his initial TPS application the applicant had a pending asylum application. As Counsel noted, the evidence of the pending asylum application was included in the applicant's initial TPS application. The record reflects that the applicant's asylum application which was filed on December 5, 1995, was still pending as of September 23, 2003, that date of filing the TPS application. Therefore, the applicant established his eligibility for late initial registration. The application should not have been denied for abandonment, as the evidence requested in the notice of intent to deny had been provided with the initial application. Accordingly, the applicant is eligible for late initial registration for TPS.

It is noted that the record contains sufficient evidence to establish the requisite continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the date of filing his application.

However, the application may not be approved at this time because the applicant has not established his nationality and identity. The applicant has furnished a copy of his El Salvador birth certificate and English translation; however, he has not submitted a national identity document from his country bearing a photograph and or/fingerprint. The birth certificate alone is insufficient to establish the applicant's identity and nationality under the provision of 8 C.F.R. § 244.9(a)(1).

The case will, therefore, be remanded so that the director may enter a new decision which, if adverse to the applicant, is to be certified to the AAO for review.

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 remanded, that decision 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.

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 initial application is reopened, the director's decision is withdrawn, and the application is remanded for a new decision. The re-registration application is remanded for further action consistent with the director's new decision on the initial application.