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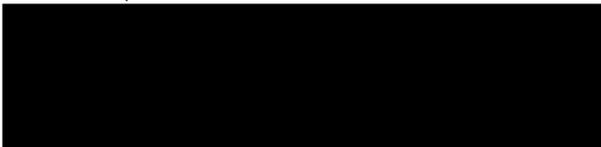
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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PUBLIC COPY



FILE:

OFFICE: CALIFORNIA SERVICE CENTER Date:

[WAC 01 293 52491]
[WAC 02 284 55117]
[WAC 05 229 70305]

JAN 29 2008

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the initial applications. The director also denied a subsequent application for re-registration, and it is currently before the Administrative Appeals Office (AAO) on appeal. The initial applications will be reopened, *sua sponte*, by the AAO, and the case will be remanded for further consideration and action.

The applicant claims 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.

On appeal, the applicant states that he did not receive the director's August 3, 2004, notice of denial of the initial applications and requested a copy.

The applicant filed initial applications for TPS on September 6, 2001, and again on July 29, 2002, which were denied on August 3, 2004, because the applicant had abandoned his application by failing to respond to an appointment notice instructing him to report to the Application Support Center in Gardena, California, on February 17, 2004, in order to have his fingerprints taken.

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 because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The record reflects that the director's denial notice of August 3, 2004, although containing the applicant's alien registration number and receipt number for one of his Form I-821 applications, bears an incorrect receipt number for the other Form I-821 application. The notice was also addressed to another individual and mailed to an address other than that of the applicant. The regulation at 8 C.F.R. § 103.5a(c) provides:

In any proceeding which is initiated by the Service, with proposed adverse effect, service of the initiating notice and of notice of any decision by a Service officer shall be accomplished by personal service.

Pursuant to 8 C.F.R. § 103.5a(a)(2), personal service may be effected by any of the following:

- (i) Delivery of a copy personally;
- (ii) Delivery of a copy at a person's dwelling house or usual place of abode by leaving it with some person of suitable age and discretion;
- (iii) Delivery of a copy at the office of an attorney or other person including a corporation, by leaving it with a person in charge;

(iv) Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address.

On appeal, the applicant requested a copy of the director's denial; however, the record does not indicate that a copy of the decision was mailed to the applicant. The record therefore does not indicate that the applicant has been served with notice of the denial of his initial applications for TPS.

The record also reveals that the applicant's fingerprints were taken by Citizenship and Immigration Services (CIS) and sent to the U.S. Federal Bureau of Investigation (FBI) on May 1, 2006. According to FBI records, the applicant was arrested on July 6, 1996, by the Long Beach, California Police Department and charged with possession of a controlled substance. The FBI records also indicated that the applicant was arrested by the Norwalk, California Sheriff's Office and charged with possession of a narcotic controlled substance. The record does not reveal a final disposition of these offenses.

Accordingly, as the applicant has not been properly served with notice of the denial of his initial applications and has subsequently appeared for fingerprinting by CIS, the director's denial of the initial applications will be withdrawn and the applications will be remanded for a new decision. The director's denial of the application for re-registration is dependent upon the adjudication of the initial applications. Since the initial applications are being remanded, the current decision will also be remanded to the director for further review pursuant to the new decisions on the initial applications. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

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 applications are reopened, the director's decision is withdrawn, and the case is remanded to the director for further action consistent with the above and for entry of a decision.