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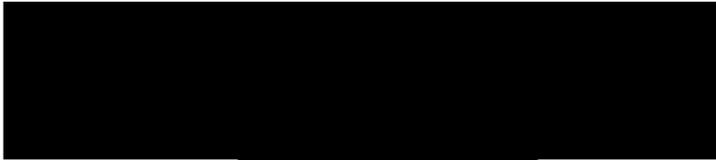
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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Services

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FILE:

[WAC 05 188 72408]

Office: CALIFORNIA SERVICE CENTER

Date:

**JAN 31 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:



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 black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The initial application was denied by the Director, Vermont Service Center. The applicant filed an appeal with the Administrative Appeals Office (AAO), which was remanded to the Vermont Service Center by the AAO for a new decision. A subsequent application for re-registration was denied by the Director, California Service Center, and is currently before the AAO on appeal. The case will be remanded.

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.

The record reveals that the applicant filed a TPS application during the initial registration period on January 28, 2002, under Citizenship and Immigration Services (CIS) receipt number EAC 02 100 51318. The Director, Vermont Service Center, denied the initial application as abandoned on June 27, 2003, after determining that the applicant had failed to appear for fingerprinting. The record of proceedings reveals that the applicant was fingerprinted in connection with her subsequent application. On July 30, 2004, the applicant filed a motion to reopen the director's decision that was granted. The Director, Vermont Service Center, denied the application again because the applicant failed to establish her continuous residence and continuous physical presence in the United States during the qualifying period. On August 27, 2004, the applicant filed an appeal from the denial decision. The Director (now Chief), AAO, remanded that appeal on November 8, 2005.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 7, 2005, and indicated that she 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.

On appeal, counsel for the applicant states that the denial of the TPS application was in error. The applicant also submits evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period.

The director's decision of denial, dated August 16, 2005, clearly advised the applicant that any appeal must be properly filed within thirty days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). Coupled with three days for mailing, the appeal, in this case, should have been filed on or before September 19, 2005. The appeal, however was not received at the California Service Center until September 26, 2005. Based upon the applicant's failure to timely file an appeal, the appeal would normally be rejected. However, the Director, Vermont Service Center, failed to issue a new decision on the initial appeal filed on August 27, 2004. There is no appeal from a denial due to abandonment. 8 C.F.R. 103.2(b)(15). Since the original decision was not appealable to the AAO, and the AAO remanded the case to the Vermont Service center, the AAO has no jurisdiction to consider the appeal of the Vermont Service Center's decision.

The Vermont Service Center director's decision on the initial application has previously been remanded for a new decision. The California Service Center director's denial of the application for re-registration is dependent upon the adjudication of the initial application. Since the initial application has been remanded, the decision on the re-registration application will be remanded to the California Service Center 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 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 case is remanded for further action consistent with the director's new decision on the initial application.