

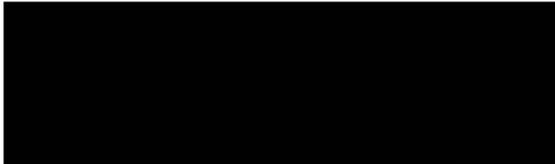
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



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

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FILE: [REDACTED] Office: California Service Center Date: **MAR 10 2008**
[WAC 05 134 80049]

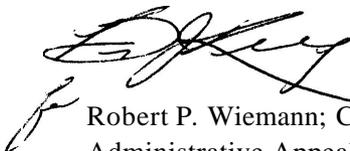
INRE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: 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.


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 a late initial TPS application on October 22, 2002. The record does not reflect a receipt number or a decision for that application. The record reveals that the applicant filed a subsequent TPS application on April 29, 2003, under CIS receipt number SRC 03 14654240, and indicated that he was re-registering for TPS. The Director, Texas Service Center, categorized the application as a new initial application for TPS and denied that application, on July 31, 2003, due to abandonment. The director noted that the applicant failed to respond to a June 17, 2003 notice of intent to deny requesting that he submit evidence to establish eligibility for TPS. 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 1-821, Application for Temporary Protected Status, on February 11, 2005, under CIS receipt number WAC 05 134 80049, and indicated that he was re-registering for TPS. The Director, California Service Center, denied that application on August 16, 2005, because the applicant's prior TPS application had been denied and the applicant is not eligible for re-registration for TPS.

On appeal, the applicant reasserts his eligibility for TPS. With his appeal, in an attempt to establish his continuous residence and his continuous physical presence in the United States, the applicant submits documentation, including school records, and medical records.

It is noted that the applicant is eligible for late initial registration because he had a pending Form 1-485, Application to Register Permanent Residence or Adjust Status, during the initial registration period. The record reflects that the Form 1-485 was denied on July 27, 2006. The applicant's TPS application was filed on October 22, 2002, while the 1-485 was still pending, and therefore, he was eligible to file a late initial application for TPS as he fell within the provision described in 8 C.F.R. § 244.2(f)(2)(ii).

It is also noted that the applicant did respond to the director's notice of intent to deny. Therefore, the director should not have denied the application for abandonment.

The record 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, his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States from March 1, 2001, to the date of filing his initial TPS application. The record of proceedings does not reveal any derogatory information. The record of proceedings contains a photo in the form of the biographic page of the applicant's passport, and documentation, including school and medical records, which 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.