

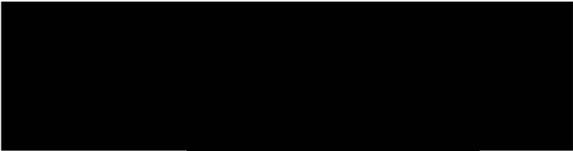
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: California Service Center DATE: **MAR 21 2008**
[SRC 01 16655899]
[WAC 06 073 70031 re-registration]

INRE: Applicant: [REDACTED]

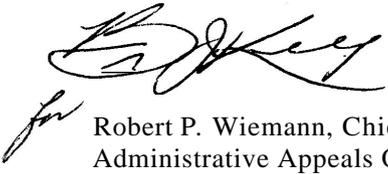
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A subsequent application for re-registration was denied by the Director, California Service Center (CSC), and is currently on appeal before the AAO. The initial application will be sua sponte re-opened, the decision withdrawn, and the appeal will be sustained.

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 under CIS receipt number SRC 01 166 55899. The director denied that application on September 28, 2004, because the applicant failed to appear for a fingerprint appointment. After a review of the record, the Chief, AAO, disagrees with the director's denial decision and the decision will be withdrawn.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;

(iii) The applicant is a parolee or has a pending request for reparole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

Persons applying for TPS offered to EI Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until September 9, 2009, upon the applicant's re-registration during the requisite time period.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. *See* Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

The applicant filed the current Form 1-821, Application for Temporary Protected Status, on December 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 the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

In this case, the applicant filed his application during the initial registration period and had been previously been granted TPS, but it was subsequently denied by the director, California Service Center, for failure to appear for a fingerprint appointment.

On appeal counsel for the applicant asserts that the applicant never received his request for a fingerprint appointment. A review of the record indicates that the fingerprint notice was indeed dated after the applicant's appointment, and thus the applicant did not have proper notice that he was required to appear for fingerprinting. The applicant has subsequently been fingerprinted and does not appear to have any disqualifying arrests or criminal record. It was inappropriate for the director to withdraw the applicant's TPS for failure to appear for fingerprinting when he was not properly notified of his appointment. Consequently, the director's decision to deny the application will be withdrawn and the appeal will be sustained.

The applicant filed an application on April 8, 2005, and indicated he was filing a re-registration application. The director denied this application on August 16, 2005, concluding that the applicant was not eligible to re-register. The applicant appealed this denial, but the appeal was untimely and rejected by the director on November 1, 2005.

The applicant filed this application on December 12, 2005, and indicated he was filing re-registration application. The director subsequently denied this application on August 5, 2006, concluding that the applicant was not eligible for re-registration.

Inasmuch as the original denial has been withdrawn based on CIS' failure to properly notify the applicant of a fingerprint appointment the director's decision on this re-registration application will be withdrawn and the appeal will be sustained.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. In this case the applicant has met his burden.

ORDER: The appeal is sustained.