



U.S. Citizenship
and Immigration
Services

COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

ML

[REDACTED]

FILE:

[REDACTED]

[WAC 05 204 75501]

OFFICE: California Service Center

DATE: SEP

IN RE:

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:

[REDACTED]

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 initial application for Temporary Protected Status was denied by the Director, Vermont Service Center (VSC). A subsequent application for re-registration was also denied by the Director, California Service Center (CSC), and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for further action.

The applicant is a native and 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 October 31, 2001, under receipt number EAC 02 048 52852. On June 30, 2003, the Director, Vermont Service Center, denied that application due to abandonment because the applicant failed to respond to the request for evidence establishing her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The director advised the applicant that while a denial due to abandonment may not be appealed, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. Nevertheless, the record does not reflect that the applicant filed a motion to reopen during the requisite timeframe.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 28, 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 states that the applicant has been in the United States since 2000. She further states that it is difficult to obtain the requested information since the applicant does not have a Social Security number. In addition counsel submits the following documentation:

1. An affidavit from [REDACTED] a secretary of Crescent Duck Farm, Inc., dated September 8, 2005, attesting that the applicant was an employee at the company for the period from April 3, 2001 to October 23, 2003, and that she returned to work as of December 20, 2004;
2. An affidavit dated September 10, 2005, from [REDACTED] a manager of Giant Express, stating that the applicant is a client who has been using their service on a monthly basis since October 29, 2000; and,
3. An affidavit dated September 12, 2005, from [REDACTED] claiming that she has personally known the applicant since 2000.

The record of proceeding reveals that on April 15, 2003, a Notice of Intent to Deny was issued to the applicant requesting additional evidence regarding her continuous residence and continuous physical presence in the United States during the requisite periods. On June 30, 2003, the director sent a Notice of Decision denying the applicant's TPS. These notices, however, were sent to an incorrect address at [REDACTED] instead of [REDACTED]. It is also noted that the record contains a returned mail envelope from the United States Postal Office with "Return to Sender" label and marked "Not Deliverable as addressed - unable to forward." Therefore, the case will be remanded so that the director may accord the applicant an opportunity to submit the requested evidence and enter a new decision.

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 director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.