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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

M,

[REDACTED]

FILE:

Office: VERMONT SERVICE CENTER

Date: SEP 04 2008

[REDACTED]
[EAC 03 260 56760]

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 Vermont Service Center. Any further inquiry must be made to that office.

for Robert P. Wiemann, Chief
Administrative Appeals Office

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

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 applicant filed an initial application for TPS on May 31, 2001, under receipt number EAC 01 149 54942. The VSC director denied the *initial application on December 20, 2002*, because the applicant had abandoned his application by failing to respond to a Notice of Intent to Deny (NOID).

The applicant filed additional TPS applications in 2003, 2005, and this Form I-821, Application for Temporary Protected Status, on September 17, 2003. The applicant also filed a Motion to Reopen which was denied by the VSC on May 15, 2003.

The director denied this application as a re-registration because the applicant's initial TPS application had been denied and he concluded the applicant was not eligible to apply under a late initial registration and had not established a continuous physical residence and presence during the required periods.

The initial decision will be sua sponte re-opened and approved. The record establishes that the applicant did, in fact, respond to the director's request for evidence by submitting a copy of the requested local police report. However, CIS sent the record back to him stating they could not match the record with his file despite the correct spelling of the applicant's name. A short time later CIS denied the application stating the applicant had failed to respond to the request, and denied subsequent applications because the applicant was not eligible for late registration. But for the CIS failure to accept the evidence from the applicant, since it had actual notice of the evidence being received, the applicant's initial application would have been approved. The AAO withdraws the initial decision, accepts the evidence provided by the applicant in response to the director's NOID, and approves the application.

The applicant's remaining I-821 application will be accepted as a re-registration application, with the director's decision being withdrawn and the re-registration sustained. It does not appear the applicant willfully failed to re-register for his subsequent annual re-registrations. Although the director noted that the applicant has potentially used multiple Social Security Numbers, the bulk of the evidence supports that the applicant was eligible for TPS at the time he filed his initial application during the initial registration period.

The applicant has satisfied all other eligibility requirements for TPS. Therefore, the application is approved.

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



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ORDER: The appeal is sustained.