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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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[Redacted]

FILE: [Redacted] OFFICE: California Service Center DATE: SEP 11 2008
[WAC 05 221 87598, as it pertains to
WAC 01 180 54928]

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 office that originally decided your case. Any further inquiry must be made to that office.

Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, California Service Center (CSC). The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office (AAO), and the application will be approved. A subsequent application for re-registration was also denied by the CSC director and is currently before the AAO on appeal. The appeal will be sustained, and the applications will be approved.

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 April 11, 2001, under receipt number WAC 01 180 54928. On September 14, 2004, the director denied that application due to abandonment because the applicant failed to appear for a scheduled fingerprinting appointment. The director informed the applicant that 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 applicant, in this case, filed a motion to reopen from the director's decision on October 5, 2004. The director dismissed that motion on October 19, 2004 because it did not state new facts and was not supported by affidavits or other documentary evidence.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on March 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. The applicant has now submitted an appeal.

On appeal, the applicant, through counsel, states that she did not abandon her TPS application since she did not receive her fingerprinting appointment notice. She further states that the Service Center failed to send the Fingerprint Notification to her new address at [REDACTED] Mountain View, CA 94043, where she had maintained residency for three years. Service records show that a Fingerprint Notification was issued on December 16, 2003 and was sent to the applicant's address of record; the same address provided by the applicant on her TPS re-registration application filed on September 25, 2002. There is nothing in the record to indicate the notice was returned by the U.S. Postal Service as undeliverable.

The record, however, indicates that the applicant was fingerprinted on June 3, 2005, April 5, 2006, and November 13, 2007, and the applicant's Federal Bureau of Investigations (FBI) Fingerprint Results Report does not reflect any grounds that would bar the applicant from receiving TPS. In addition, the record also contains sufficient evidence to establish the applicant's continuous residence and continuous physical presence in the United States during the requisite periods which establishes the applicant's eligibility for TPS. There are no other known grounds of ineligibility; consequently, the director's decision will be withdrawn and the appeal will be sustained.

In addition, 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 applicant is eligible for employment authorization under 8 C.F.R. § 274a.12(a)(12).

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. The applicant has met this 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.