

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

M, 1

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: JUL 07 2010

[REDACTED]

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:

Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Chief, Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, Texas Service Center. A subsequent application for re-registration was denied by the Director, California Service Center. The initial application was reopened, *sua sponte*, by the Chief, Administrative Appeals Office (AAO), and the application and the re-registration application were approved. The matter is again before the AAO. The case will be returned to the director for further consideration and action.

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 applicant filed an initial application for TPS under receipt number [REDACTED]. The Director, Texas Service Center (TSC), denied the initial application on April 29, 2003, after determining that the applicant had failed to respond to a request for additional evidence. On June 4, 2003, the applicant filed a motion to reopen with the TSC director. On October 19, 2004, the TSC director reopened the application, stated that all the evidence was submitted, but requested the applicant to appear for his required fingerprint appointment. The TSC director then determined that the applicant had failed to appear for his scheduled fingerprint appointment and denied the application on December 13, 2004, due to abandonment for failure to appear for fingerprinting.

The record reveals that the applicant subsequently was fingerprinted and the FBI Fingerprint Results Report dated April 5, 2006, did not reflect a criminal record that would bar the applicant from receiving TPS. Additionally, the AAO determined the record of proceedings contained sufficient evidence to establish the applicant's eligibility for TPS and did not reflect any grounds that would bar the applicant from receiving TPS. Therefore, the AAO withdrew the director's decision and the initial application was 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 was approved, the appeal from the denial of the re-registration was sustained and that application was also approved.

The applicant subsequently was notified of the denial of his Form I-765, Application for Employment Authorization. The AAO has no jurisdiction over applications for employment authorization. The director erroneously accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the file to the AAO. Therefore, the case will be remanded and the director shall consider the applicant's response under receipts EAC 08 105 51559 and EAC 09 153 51291 as motions to reopen.

The burden of proof is upon the applicant to establish that he or she meets all TPS requirements. Applicants shall submit all documentation as required in the instructions or requested by United States Citizenship and Immigration Services (USCIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

It is noted that the AAO previously determined that the applicant has met this burden. In addition, it is further noted that the record does not reflect any grounds that would bar the applicant from receiving TPS. There are no other known grounds of ineligibility. However, as the validity period of the applicant's fingerprint check has expired, the applicant should be provided a fingerprint notification form, and be afforded the opportunity to comply with its requirements.

ORDER: The case is remanded to the director for further action consistent with the above.