



MM

U.S. Department of Justice

Immigration and Naturalization Service

**PUBLIC COPY**

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File:



Office: Nebraska Service Center

Date:

JAN 10 2003

IN RE: Applicant:



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

IN BEHALF OF APPLICANT:



**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Nebraska Service Center, reopened, and denied again by said Director. The matter came before the Associate Commissioner on appeal. The case was remanded by the Associate Commissioner for Examinations. The matter is again before the Associate Commissioner for Examinations on appeal. The case will be remanded again to the director for further action.

The applicant is a native and citizen of El Salvador who indicated on his application that he entered the United States on September 7, 1992, without a lawful admission or parole. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254a, because the director determined that the applicant was ineligible for the benefit sought due to his criminal history in the United States.

On appeal, counsel claims that the applicant did not receive the sentence mentioned in the director's decision, and the conviction was for another offense.

Section 244(c) ALIENS ELIGIBLE FOR TEMPORARY PROTECTED STATUS.-

(2) ELIGIBILITY STANDARDS.-

(B) ALIENS INELIGIBLE. - An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that-

(i) the alien has been convicted of any felony or 2 misdemeanors committed in the United States,....

The director, in his decision, asserted that the applicant had been convicted of lewd acts with a child under the age of 14, and was sentenced to three years in prison.

In the previous decision issued by the Associate Commissioner for Examinations on February 27, 2002, the director was informed that the derogatory evidence used as the basis for the denial of the application, was not entered into the record of proceeding. The case was remanded for inclusion of all the adverse evidence which was cited in the decision of denial.

The director inserted Service records which reveal the applicant's criminal history and forwarded the record back to the AAO for consideration. However, the record of proceeding does not include official records from the Federal Bureau of Investigation (FBI) and the state court sufficient to establish a felony conviction in support of the director's denial.

The director did not previously issue a Request for Evidence under the authority of 8 C.F.R. 103.2(b)(8). As the current record of proceeding is insufficient to establish ineligibility of the alien for the requested benefit, the case will be remanded again for the



director to request evidence from the alien to resolve outstanding criminal conviction and sentencing issues. The director's decision will be withdrawn; the director shall issue a new decision after consideration of any further evidence provided by the alien.

**ORDER:** The director's decision is withdrawn. The case is remanded to the director for further action in accordance with the above.