



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: 06/11/14

IN RE: Applicant: [Redacted]

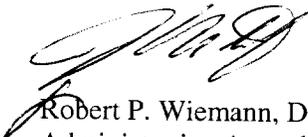
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. 1254

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.


Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The application was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

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 Director, Vermont Service Center, denied the application after determining that the applicant was ineligible for TPS because he had been convicted of two misdemeanor offenses committed in the United States.

The Director, AAO, reviewed the record of proceeding and affirmed the director's findings that the applicant's convictions of driving while intoxicated and driving while ability is impaired are both misdemeanor convictions. The AAO director noted that although counsel, on appeal, asserted that driving while ability is impaired is a traffic infraction and not a misdemeanor, the punishment for this offense, according to New York VTL 1193.1, is "by a fine of not less than three hundred dollars or by imprisonment in a penitentiary or county jail for not more than fifteen days, or by both such fine and imprisonment." He concluded that VTL 1193.1 is, therefore, a misdemeanor as defined in 8 C.F.R. § 244.1.

On motion to reopen, counsel asserts that the analysis used to conclude that the applicant was convicted of two misdemeanor offenses is inaccurate. He reiterates his original argument that the applicant was convicted of one misdemeanor and one traffic infraction, not two misdemeanors.

Pursuant to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be proved at the reopened proceedings and be supported by affidavits or other documentary evidence. A review of the record reflects that the AAO director reviewed the evidence furnished, including the New York Vehicle and Traffic Law, and concurred with the Service Center director's conclusion that the applicant was convicted of two misdemeanors as defined in 8 C.F.R. § 244.1. Counsel has presented no new facts or other documentary evidence in support of the motion to reopen.

Accordingly, the motion will be dismissed.

ORDER: The decision of the AAO dated August 22, 2002, is affirmed.