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U.S. Citizenship
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FILE:

[REDACTED]
[EAC 01 245 52021]

Office: VERMONT SERVICE CENTER

Date: JUN 02 2005

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The case will be remanded to the director for further action.

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 determined that the applicant was ineligible for TPS because he had been convicted of a felony offense committed in the United States. The director, therefore, denied the application.

On appeal, the applicant asserts that when he pled guilty, he did not understand what he was pleading because he does not speak English. He requests reconsideration because he needs to work and support his family, and because he has a United States citizen child.

Pursuant to section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General, now, the Secretary of the Department of Homeland Security, finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

Based on information contained in the Federal Bureau of Investigation (FBI) report, the director determined that the applicant was ineligible for TPS because he was convicted on January 21, 2000, of a felony charge of **aggravated assault**.

The instructions regarding the usage of the FBI report, and the provisions of 28 C.F.R. § 50.12, state, in part:

If the information on the record is used to disqualify an applicant, the official making the determination of suitability for licensing or employment shall provide the applicant the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. The deciding official should not deny the license or employment based on the information in the record until the applicant has been afforded a reasonable time to correct or complete the information, or has declined to do so.

The record of proceeding, in this case, is devoid of the court's charging document and final disposition of the applicant's arrest to establish that he was in fact convicted of the crime that the director stated was listed in the FBI report. It is noted that the FBI report is incomplete, and a copy of a "New Jersey Criminal History Detailed Record" is attached to the FBI report.

It is further noted that the applicant also submitted a copy of a warrant for his arrest, based on the charge for **aggravated arson**, in violation of New Jersey statute 2C:17-1A, committed on or about July 18, 1999, in Plainfield City, New Jersey (name used, [REDACTED]).

There is no evidence in the record that the applicant was requested to submit the court documents for all of his arrests, or if only one offense was committed, as claimed by the applicant.

It also is noted that the applicant has not submitted sufficient, credible evidence to establish his qualifying continuous residence since February 13, 2001, or continuous physical presence in the United States since March 9, 2001. The applicant has submitted evidence indicating at least two different social security numbers. Some evidence submitted appears altered and/or fraudulent. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in

support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Accordingly, the case is remanded so that the director may accord the applicant an opportunity to submit arrest reports and the court's final dispositions of all arrests, and for consideration and discussion of all issues pertinent to this case. The director may request any additional evidence he considers pertinent. Similarly, the applicant may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.