



U.S. Citizenship
and Immigration
Services

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MS

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: **NOV 15 2007**

[WAC 05152 75586]

[WAC 07 217 50786, motion]

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The previous decision of the AAO will be withdrawn, the motion to reopen will be sustained and the application approved.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 director denied the application after determining that the applicant failed to submit requested court documentation relating to his criminal record.

Upon review of the record of proceeding, the AAO concurred with the director's conclusion and dismissed the appeal on May 14, 2007.

On motion to reopen, counsel for the applicant reasserted the applicant's claim of eligibility for TPS and provided certified court documents relating to the applicant's criminal record.

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The applicant's motion to reopen consists of a statement from counsel on the applicant's behalf and the submission of requested court documentation. The court documentation indicates that one of the misdemeanor charges against the applicant was dismissed. As such, the issue on which the underlying decisions were based has been overcome on motion. The applicant has not been convicted of two or more misdemeanors or a felony, therefore, he is not ineligible for Temporary Protected Status.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has been met since the applicant has provided new facts or additional evidence to overcome the previous decision of the AAO. Accordingly, the previous decision of the AAO will be withdrawn, the motion to reopen will be sustained and the application approved.

ORDER: The motion to reopen is sustained. The previous decision of the AAO dated May 14, 2007, is withdrawn, and the application for TPS is approved.