U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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MAR 14 2008

FILE: [redacted] OFFICE: VERMONT SERVICE CENTER DATE:
[EAC 01 182 52434]

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

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, and the previous decision of the AAO will be affirmed.

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 on October 7, 2002, after determining that the applicant had failed to submit requested evidence relating to his criminal record.

The AAO reviewed the record of proceeding, including additional evidence furnished on appeal, and noted that the applicant was convicted of (1) disorderly conduct (Docket [redacted] on March 16, 2000, and (2) disorderly conduct (Docket [redacted] on March 16, 2000. The AAO further noted that the applicant failed to submit the final disposition of his arrest on October 21, 1999, for aggravated harassment despite the director's request to provide court documents. The AAO concluded that although the convictions of disorderly conduct are classified as "violations" by the State of New York, they are punishable by imprisonment for a term of up to 15 days. Therefore, for immigration purposes, these convictions are considered misdemeanors. The AAO affirmed the director's decision to deny the TPS application and dismissed the appeal on July 11, 2003.

On motion, counsel asserts that both charges for disorderly conduct are all in one case, not two crimes committed at different times, and that both charges were pled guilty on the same case; therefore, they should be considered one arrest.

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 motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

A review of the record reveals that the applicant has presented no new facts in support of the motion to reopen. It is noted that counsel submits copies of court documents similar to court documents previously furnished reflecting two different docket or case numbers (Docket # [redacted] and [redacted]. That the crimes arose from a common scheme does not preclude them from being counted as separate offenses. According to the court dispositions, the applicant was charged with two separate offenses under two separate case numbers, and he clearly pled guilty to two separate crimes, and the court issued two separate sentences. Therefore, despite counsel's assertion, the applicant remains convicted of the two separate and distinct misdemeanor offenses. Additionally, the applicant has still failed to submit the court disposition of his arrest for aggravated harassment.

Furthermore, pursuant to 8 C.F.R. 103.5(a)(1)(i), any motion to reopen a proceeding before Citizenship and Immigration Services (CIS) filed by an applicant or petitioner 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 CIS where it is demonstrated that the delay was reasonable and was beyond the control of the applicant.

The applicant, in this case, had 30 days from July 11, 2003, in which to file a motion to reopen or a motion to reconsider. This motion was properly received by the Vermont Service Center on October 25, 2003. The applicant has not demonstrated that the delay was reasonable and was beyond his control.

Accordingly, the motion will be dismissed, and the previous decision of the AAO will be affirmed.

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 motion is dismissed. The decision of the AAO dated July 11, 2003, is affirmed