

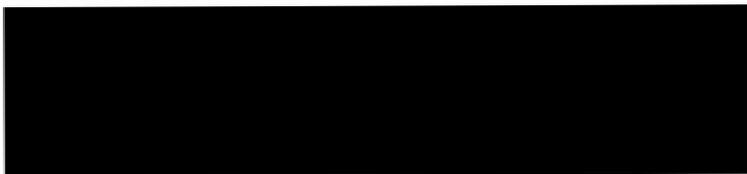
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U.S. Department of Homeland Security
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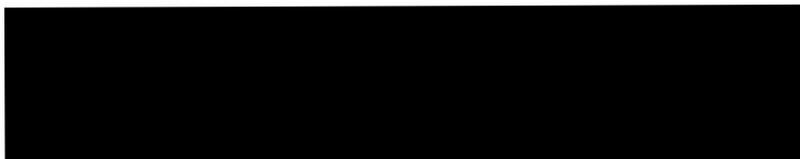
FILE: [REDACTED] Office: VERMONT SERVICE CENTER
[EAC 05 223 73568 in reference to appeal EAC 06 158 50583]

Date: FEB 21 2007

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents contained within this record have been returned to the Washington District Office. Any further inquiry must be made to the Vermont Service Center.

Cindy M. Gomez for
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed based upon the withdrawal of the appeal by applicant's counsel.

The applicant claims to be 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 record currently consists of a work folder furnished to the AAO by the Washington District, Immigration and Customs Enforcement Office (WAS/DRO). The WAS/DRO indicates that the applicant's permanent record cannot be located at this time. The record of proceeding, as currently constituted, is incomplete. **The record** contains the following documentation relevant to this appeal: a copy of the Form I-797C, Notice of Action, indicating that a Form I-290B, Notice of Appeal to the Commissioner, was received on May 1, 2006, at the Vermont Service Center, under receipt number EAC 06 158 50583; another Form I-797C, for another Form I-290B, received at the Vermont Service Center on September 1, 2006, under receipt number EAC 06 248 51743; a photocopy of the Form G-28, Notice of Entry of Appearance by Attorney or Representative dated March 5, 2005; and, a copy of a letter withdrawing the applicant's appeal before the AAO dated February 1, 2007, and signed by applicant's counsel. The record is devoid of the Forms I-290B, the Forms I-821, Applications for Temporary Protected Status, the denial notice(s) issued by the Vermont Service Center, and any supporting documentation that may have been provided by the applicant and/or counsel.

Therefore, the reasons for the original denial(s) are not known and a true and accurate assessment of the facts surrounding this appeal cannot be made based upon the current record furnished to the AAO. However, based upon the unusual nature surrounding this case, and counsel's request on behalf of the applicant, AAO will entertain and accept the request for the withdrawal of the appeal, and the appeal will be dismissed. *See Matter of Cintron*, 16 I&N Dec. 9 (BIA 1976).

It is noted that the record does reveal that the applicant was apprehended on October 4, 2006 by the WAS/DRO, is currently in custody, and that a warrant of removal has been issued. The record also reveals that on June 23, 2003, the applicant was convicted under Virginia statute 18.2-266, for driving while intoxicated, 1st offense, a misdemeanor. On September 16, 2005, the applicant was convicted under Virginia statute 46.2-301, for driving under revocation or suspension of license, also a misdemeanor if the offense for which the revocation or suspension of license was based upon Virginia statute 18.2-266. Therefore, the applicant would not qualify for TPS based upon his conviction for two or more misdemeanors under 8 C.F.R. § 244.4.

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 appeal is dismissed.