



U.S. Citizenship
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Services

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OCT 28 2009

[REDACTED]

FILE:

[EAC 01 188 54389]
[EAC 09 112 51382 - MOTION]

OFFICE: VERMONT SERVICE CENTER

DATE: OCT 28

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 Vermont Service Center. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
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 motion to reopen is approved and the case will be remanded for further consideration and 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 denied the application because she found that the applicant had failed to submit requested court documentation relating to his criminal record.

On motion to reopen, counsel for the applicant reasserted his claim of eligibility for TPS. Counsel also states that the applicant was only convicted of one misdemeanor. In addition, the applicant submits evidence to support this claim. Specifically, the applicant submits evidence indicating that the applicant was only charged with one offense "Unauthorized Use of a Vehicle in the 3rd Degree." Consequently, the applicant has submitted sufficient evidence to establish he was only convicted of one misdemeanor and is therefore eligible for TPS.

There are no other known grounds of ineligibility; consequently, the director's decision will be withdrawn. However, the validity period of the applicant's fingerprint check has expired.

Accordingly, the case is remanded for the purpose of sending the applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements. Thereafter, the director will render a new decision. Should the decision be adverse, the director must give written notice setting forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i), and the applicant shall be permitted to file an appeal without fee.

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 case is remanded for appropriate action and decision consistent with the foregoing.