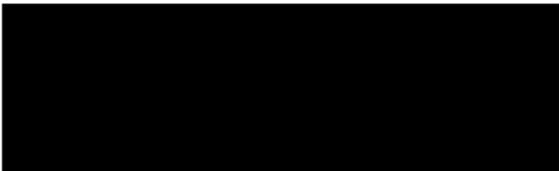




U.S. Citizenship
and Immigration
Services



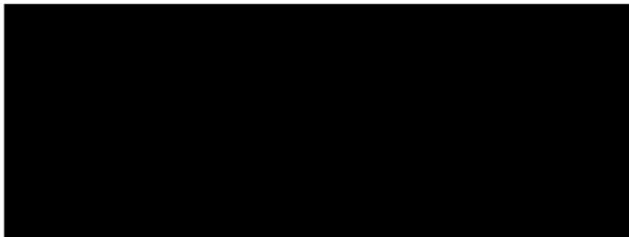
M₁

DATE: Office: VERMONT SERVICE CENTER FILE: 
DEC 03 2012

IN RE: Applicant: 

APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254a

ON BEHALF OF APPLICANT:

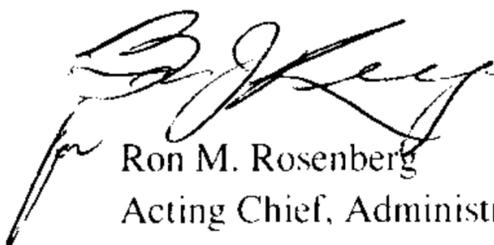


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Ron M. Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 and to reconsider its prior decision. The motion will be dismissed.

The applicant is a native and a citizen of El Salvador who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director withdrew the applicant's TPS because the applicant failed to submit requested court documentation relating to his criminal record.

The AAO, in dismissing the appeal on November 22, 2011, concurred with the director's decision. The AAO conducted appellate review on a *de novo* basis and determined that the applicant is not eligible for TPS because he had failed to submit requested court documentation, including but not limited to, police documents relating to his arrest on July 5, 2009 for possession of narcotic controlled substance and documents relating to the court's disposition of the arrest.¹

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 to reconsider must state the reason for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy ... [and] must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

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

On motion, counsel for the applicant reasserts his claims on appeal that the applicant was not able to procure evidence of an arrest for possession of a narcotic controlled substance because no such arrest exists and that he contacted the Los Angeles Police Department who told him that the police department will send a copy of a disposition, if one is in existence, to the AAO. Additionally, counsel claims that the applicant was arrested and convicted of only one infraction – being drunk in public – which does not render him ineligible for TPS.

In support of this motion, counsel submitted a letter dated December 16, 2011, a declaration from the applicant, a copy of the AAO's November 22, 2011 decision with a typed note purportedly from the Los Angeles Police Department affixed to the top left corner of the page, that stated "The Los Angeles Police Department will send a certified copy of the arrest report/disposition directly to INS. If the request cannot be processed, LAPD will notify INS," and previously submitted court documentation relating to the arrest and conviction of the

¹ The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

applicant for violating 25620 B&P, possession of open container in public place. Counsel does not submit the requested court and/or police document relating to the applicant's arrest on July 5, 2009 for possession of narcotic controlled substance. And contrary to counsel's representation on motion, the record does not contain any document from the Los Angeles Police Department relating to the narcotic arrest of the applicant.

The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1).

An alien shall not be eligible for TPS under this section if 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. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception when the offense is defined by the state as a misdemeanor and the sentence actually imposed is one year or less, regardless of the term actually served. Under this exception, for purposes of 8 C.F.R. § 244 of the Act, the crime shall be treated as a misdemeanor. 8 C.F.R. § 244.1.

In this case, the record includes a Federal Bureau of Investigation (FBI) report dated March 16, 2010, indicating that on July 5, 2009, the applicant was arrested by the Los Angeles Police Department for one count of possession of narcotic controlled substance. The applicant has been made aware of this arrest and has been requested on a number of occasions to submit certified documentation from the arresting agency, in this case the Los Angeles Police Department or from the court indicating that no charge was filed against him for the possession of narcotic controlled substance. The applicant has failed to submit the requested document.

Notwithstanding the FBI's record of the arrest of the applicant on July 5, 2009 for possession of narcotic controlled substance, counsel for the applicant has continuously dismissed this report claiming that the applicant has never been arrested for possession of narcotic controlled substance. However, counsel has failed to submit any official documentation, such as a police report or statement indicating that no such arrest exists or that the arrest was in error. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The basis for the denial of the application and the subsequent appeal was the applicant's failure to submit documentation from the arresting agency and/or the court indicating that no charge was filed against the applicant for the drug arrest or that the drug arrest was in error. On motion, the applicant has failed to submit any credible and persuasive evidence to address this issue. As such,

the issue on which the underlying decisions were based has not been addressed or overcome on motion.

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 not been met since the applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO. Nor is the applicant's stated reason for reconsideration supported by any pertinent precedent decisions to establish that the decisions were based on an incorrect application of law or Service policy when filed, or that the decision was incorrect based on the evidence of record at the time of the initial decision. Accordingly, the motion to reopen and reconsider will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The motion is dismissed. The previous decision of the AAO dated November 22, 2011 is affirmed.