



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: JUL 26 2013

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:  
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, 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 applicant appealed the decision of the AAO. A motion to reopen, rather than an appeal, is the proper forum in this case, pursuant to 8 C.F.R. § 103.5(a)(1)(i). The appeal, therefore, will be treated as a motion to reopen. The motion will be granted, and the appeal will be sustained.

The applicant claims to be a 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 withdrew the applicant's TPS because: (a) it was determined that the applicant ordered, incited, assisted or otherwise participated in the persecution of others; and (b) the applicant failed to submit requested court documentation relating to an arrest on July 9, 2008 for driving with .08 percent or more alcohol in the blood.

The AAO conducted appellate review on a *de novo* basis and determined that the applicant was not a persecutor and withdrew the director's finding on that ground. The AAO, in dismissing the appeal on April 4, 2013, affirmed the director's findings regarding the applicant's failure to provide evidence from the court establishing that his arrest/detainment on July 9, 2008 and his 1992 conviction of driving with .08 percent or more alcohol in the blood were one and the same.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.<sup>1</sup> A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion, counsel submits the complete court documentation in Case no, [REDACTED] from the [REDACTED] Municipal Court of California, which reflects that the applicant's March 17, 1992 conviction of driving with .08 percent or more alcohol in the blood and his bench warrant arrest on July 9, 2008 are one and the same. The court documents indicate that the applicant had violated his probation and that probation was revoked and he was ordered to pay a fine. On July 16, 2008, probation was reinstated and was continued on the same terms and conditions and the applicant was credited with time served (nine days).

The applicant has one misdemeanor conviction and it does not render the applicant ineligible for TPS under the provisions of section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a). There are no other known grounds of ineligibility. Therefore, the director's decision to withdraw the applicant's TPS and the portion of the AAO's decision affirming the director's finding on the criminal charge will be withdrawn, and the applicant's TPS will be reinstated.

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<sup>1</sup> The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence> . . . ." WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

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*NON-PRECEDENT DECISION*

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An alien applying for TPS has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has met this burden.

**ORDER:** The motion is granted. The decision of the director dated June 1, 2011 and the portion of the AAO's April 4, 2013 decision relating to the criminal charge are withdrawn.