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U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 25 2008
[WAC 05 19072378
as it relates to SRC 01 141 54084]

INRE: Applicant:



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 have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: Approval of the applicant's Temporary Protected Status was withdrawn by the Director, California Service Center (CSC). A subsequent appeal was dismissed by the Chief, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion to reopen will be granted, and the case will be remanded to the CSC.

The applicant is a citizen and national 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 reveals that the applicant filed an initial TPS application on March 16, 2001. The Texas Service Center (TSC) director approved that application on October 25, 2002.

The applicant filed the current Form 1-821, Application for Temporary Protected Status, on April 8, 2005, and indicated that he was re-registering for TPS.

The director withdrew the applicant's TPS on July 6, 2006, after determining that the applicant failed to provide the final court disposition(s) with regards to his arrest(s). On August 1, 2005, the applicant, through counsel, filed an appeal which was dismissed by the AAO.

Sec. 244.14 Withdrawal of Temporary Protected Status.

(a) Authority of director. The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time upon the occurrence of any of the following:

(1) The alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status; (emphasis added)

Further, an alien shall not be eligible for temporary protected status 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).

The record of proceedings reflects that on October 6, 2005, the applicant was found guilty and convicted, by the Harris County District Court, Texas, of Kidnapping (3rd degree), a felony. The trial court imposed a suspended sentence of nine years.

On motion, counsel asserts that the applicant pled not guilty to the crime and has maintained his innocence. Counsel also states that on March 22, 2007, the appeals court reversed the judgment and remanded the case to the trial court for further proceedings. Counsel provides a copy of the appeals court decision.

The case is remanded for the issuance of a new decision that considers the reversed judgment and any further court proceedings regarding the applicant's criminal record.

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 to the director for entry of a new decision.