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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **AUG 04 2009**
[WAC 05 165 73589]
[WAC 09 017 50419-MOTION]

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 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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, Nebraska Service Center. A subsequent application for re-registration was denied by the Director, California Service Center. The application was reopened, *sua sponte*, by the Chief, Administrative Appeals Office (AAO). The appeal was sustained and the application was approved. The Director, California Service Center (CSC), subsequently denied the application again and it is now before the AAO on motion to reopen. The motion will be granted and the case is remanded for appropriate action.

The applicant is 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 applicant filed an initial application for TPS under receipt number LIN 01 177 50023. The director denied the initial application as abandoned on November 9, 2001, after determining that the applicant had failed to appear for fingerprinting. The applicant filed a subsequent TPS re-registration application on November 13, 2002 under receipt number LIN 03 051 50803. The director denied that application on May 19, 2003 because the applicant failed to establish that he was eligible for filing his TPS application after the initial registration period from March 9, 2001 through September 9, 2002. The applicant filed a third Form I-821, Application for Temporary Protected Status, on March 14, 2005 under receipt WAC 05 165 73589. The CSC director denied the application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

The AAO determined that the record of proceedings revealed that the applicant had been fingerprinted on August 28, 2001 and again on October 16, 2001 with no negative results reported. On May 13, 2008, the initial application was reopened, *sua sponte*, by the Chief, AAO, and the application approved. The director's denial of the application for re-registration or renewal was dependent upon the adjudication of the initial application. Since the initial application was approved on May 13, 2008, the appeal from the denial of the re-registration was sustained and that application was also approved on the same date. The AAO now withdraws both of its May 13, 2008 decisions.

Every applicant for TPS, 14 years or older, residing in the United States, must be fingerprinted in accordance with 8 C.F.R. § 103.2(e)(2). The applicant did not respond to a June 4, 2008 request to appear for fingerprinting. On September 26, 2008, the Director, California Service Center, once again denied the TPS application as abandoned. The applicant filed a timely motion. Counsel states that the applicant never received the notice of a date to appear for fingerprinting. The Vermont Service Center (VSC) scheduled the applicant for fingerprinting.

The Federal Bureau of Investigation (FBI) fingerprint results report reflects that on November 15, 2008, the applicant was arrested by the Sheriff's Office, Spanish Fork, Utah, and charged with "DUI Alcohol or Drugs." In addition, the State of Utah, Department of Public Safety, Division of Criminal Investigations and Technical Services' Criminal History Report reveals that the applicant was arrested by the Springville City Police Department on April 9, 1989, for "DUI," convicted and sentenced to 90 days confinement(); by the Springville Police Department on September 19, 1990 for "Open Container in Vehicle" (subsequently dismissed) and "Driving under the Influence of Liquor,

Misdemeanor” [REDACTED]; and, on February 16, 1991 by the Orem City Policy Department for “Deny, Susp, Disqual, Revoke Driver Lic” and “DUI Under the Influence of Alc/Drug, Misdemeanor”, convicted, fined and sentenced to 180 days confinement ([REDACTED])

The final dispositions for all of these arrests are not included in the record, nor were the final court dispositions requested. Consequently, the applicant is requested to submit the final court disposition for each of the charges detailed above.

Accordingly, the case is remanded for the purpose of providing the final court dispositions for the arrests discussed above. 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.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by United States Citizenship and Immigration Services (USCIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

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