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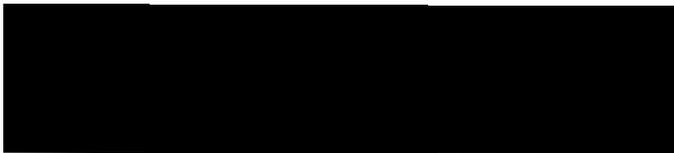
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



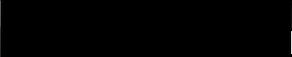
U.S. Citizenship and Immigration Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

NOV 23 2009

[EAC 08 246 50610, as it pertains to SRC 01 220 60401]

IN RE:

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 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 initial application was denied by the Director, Texas Service Center. A subsequent application for re-registration was denied by the Director, California Service Center. The current application was denied by the Director, Vermont Service Center, and is before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, AAO, and the case will be remanded for further action.

The applicant is stated to be 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 applicant filed an initial application for TPS on June 28, 2001 under receipt number SRC 01 220 60401. The director denied the application on April 14, 2004, after determining that the applicant had failed to provide requested court documentation. However, the record of proceedings reveals that the applicant provided the requested documentation.

On January 20, 2005, the applicant submitted a re-registration application under receipt WAC 05 112 76557, which the director dismissed based on the denial of the initial TPS application. On September 8, 2008, the applicant filed the current TPS application under receipt EAC 08 246 50610. The Director, Vermont Service Center, denied this application because the applicant failed to establish eligibility for late initial registration for TPS.

The director's denial of the initial application will be withdrawn. It is noted the current application under receipt EAC 08 246 50610 was initially designated as a re-registration application and the Form I-821, Application for Temporary Protected Status, was subsequently marked to indicate it as an initial application. As the denials of the subsequent applications for re-registration or renewal are dependent upon the adjudication of the initial application, the decisions in these cases will also be withdrawn and the case remanded to the director for further consideration and action.

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.

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).

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

Felony means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: 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 such alien

actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

Misdemeanor means a crime committed in the United States, either:

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.

The documentation in the record of proceeding indicates that on May 30, 2003, the applicant was convicted in North Carolina under General Statute 014-33.000 of "Assault on a Female – Non. Agg. Phy. Force," a misdemeanor.

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). The applicant has met this burden as his one misdemeanor conviction does not make him ineligible for TPS, and the record does not reflect any grounds that would bar the applicant from receiving TPS. 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.

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