

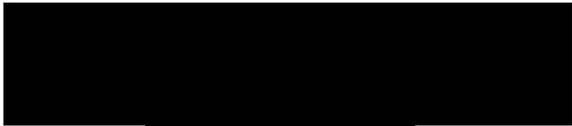


U.S. Citizenship
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: OCT 01 2009

[EAC 02 005 50553]

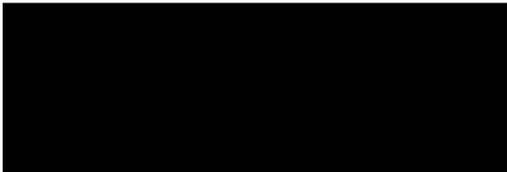
IN RE:

Applicant:



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

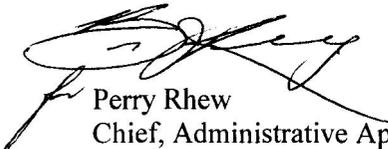
ON BEHALF OF APPLICANT:



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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the director for further 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 record reveals that the applicant filed a TPS application during the initial registration period on September 7, 2001, under receipt number EAC 02 005 50553. The Director, Vermont Service Center, approved that application on October 23, 2003.

The director may withdraw the status of an alien granted Temporary Protected Status 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).

The director withdrew temporary protected status because the applicant had been convicted on a charge of possession of marijuana.

On appeal, counsel for the applicant contends that the applicant is permitted to submit a request for a waiver of a single offense of marijuana for less than 30 grams. As evidence, counsel provides a Certificate of Analysis dated August 24, 2004, from the Division of Forensic Sciences in Fairfax, Virginia to support this claim that the conviction was for less than 30 grams of marijuana.

The applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to his drug conviction. There is no waiver available to an applicant found inadmissible under this section except for a single offense of simple possession of thirty grams or less of marijuana. Counsel is correct in his contention that the applicant can submit a waiver for this single conviction. Counsel asserts that the required waiver would be submitted within 30 days. However, to date, the record does not reflect that a Form I-601, Application for Waiver of Grounds of Inadmissibility, has been filed.

The case will be remanded so that the director shall provide the applicant the opportunity to file a Form I-601, pursuant to section 244(c)(2)(A)(ii) of the Act; 8 C.F.R. § 244.3(b). An adverse decision on the waiver application may be appealed to the AAO.

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 director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.