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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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[REDACTED]

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FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: JAN 04 2010

[WAC 05 210 73999]
WAC 09 079 50735 – 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:

[REDACTED]

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 Khew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Chief, Administrative Appeals Office (AAO). The matter is again before the AAO. The motion will be approved and the application for TPS will be approved.

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 May 11, 2001, under receipt number WAC 01 240 57427. The Director, California Service Center, approved that application on December 29, 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 failed to submit evidence necessary for the proper adjudication of the application.

On motion, counsel for the applicant states that the applicant had not committed, been prosecuted or convicted of any crimes.

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. 8 C.F.R. § 244.1.

The record reveals the following offense:

- (1) On March 29, 2005, the applicant was arrested by the St. Paul, Minnesota Police Department for "Counterfeit."

Pursuant to a notice dated March 27, 2006, the applicant was requested to submit the final court disposition for each of the charges detailed above. In response, the applicant submitted a personal statement that he had not been convicted of any felony or two misdemeanors. The applicant also submitted a criminal history record from the Minnesota Department of Public Safety indicating that the applicant was arrested on March 29, 2005, but the charge was "Unknown" and the highest conviction level was shown as "Not Determined."

The director withdrew temporary protected status because the applicant had failed to submit evidence necessary for the proper adjudication of the application.

On motion, counsel for the applicant claims that the applicant had not committed, had not been prosecuted nor been convicted of any crime. The record also contains a letter from [REDACTED] According to [REDACTED], his office did not prosecute the applicant and there is no record of any charges having been brought against the applicant. Consequently, the applicant has overcome the only basis for the director's decision to deny the TPS application.

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). The applicant has met this burden. The record does not reflect any grounds that would bar the applicant from receiving TPS. There are no other known grounds of ineligibility; consequently, the director's decision as well as the AAO's July 29, 2008 decision, will be withdrawn and the application approved.

ORDER: The motion is sustained and the TPS application approved.