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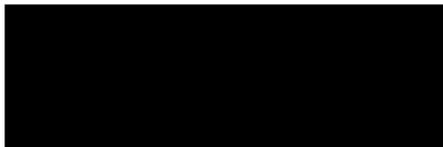
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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
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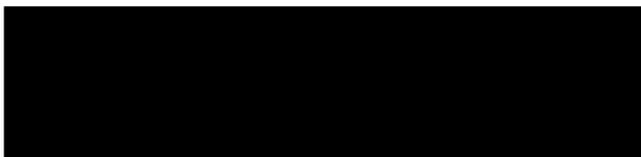
Office: VERMONT SERVICE CENTER

Date: JUL 06 2010

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

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 director denied the application because it was determined that the applicant had been convicted of two misdemeanors.

On appeal, counsel for the applicant states that the applicant was convicted of only one misdemeanor. Counsel also asserts that there is no legal basis for denying the applicant's TPS application based on his military service.

Section 244(c)(2)(B)(ii) of the Act provides that an alien shall not be eligible for TPS under this section if the Secretary, Department of Homeland Security (Secretary), finds that the alien is described in section 208(b)(2)(A) of the Act.

Section 208(b)(2)(A)(i) of the Act states, in pertinent part:

- (A) In general – Paragraph (1) shall not apply to an alien if the Attorney General determines that that – (i) the alien ordered, incited, assisted or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

The applicant indicated on his TPS application that he served in the military detachment of the [REDACTED] for six months. The director, in his decision, noted that if the applicant was filing an appeal he would need to provide details about his military service such as dates, duties, training received, the name of his commanding officer and any other pertinent information.

Counsel, on appeal, asserts that in June of 1989 the applicant was kidnapped by the El Salvadoran army, and was held against his will for approximately three to six months. Counsel asserts that 20 years after the fact, the applicant is not able to recall with precision the amount of time he was held. Counsel asserts that the applicant was not given any combat training as “the first goal of the military was indoctrinate them and make them willing soldiers before they were issued any firearms or given any combat training or responsibilities.” Counsel asserts that the applicant's days were filled with classes devoted to subjects such as how and why to serve the country and why it was necessary to resist the guerrillas. Counsel asserts that the applicant was made to do some physical exercise and some basic chores like picking up trash. Counsel asserts that the applicant does not remember the names of any of the officers who taught the classes or were responsible for his capture or detention.

Counsel's statement and the applicant's testimony at the time of his asylum interview do not reflect that the applicant ordered, incited, assisted or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

An alien shall not be eligible for TPS under this section if the Secretary 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 regulation at 8 C.F.R. § 244.1 defines "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 offenses:

- (1) On April 26, 1997, the applicant was arrested by the DeKalb County, Georgia Police Department for "Driving Under the Influence of Alcohol," "Driving With an Unlawful Alcohol," "Speeding," and "Failing to Use a Safety Belt in a Passenger Vehicle." (Docket # [REDACTED])

The court documents from the State Court of DeKalb County, Georgia indicate that on July 10, 1997, the applicant pled guilty and was convicted of a violation of Georgia Code, Section 40-6-391(a)(1), driving under the influence of alcohol," and a violation of Georgia Code, Section 40-6-1, speeding (44/25), both misdemeanors. The applicant was ordered to serve 12 months in jail and pay a fine of \$900. The applicant was granted the privilege of serving his entire sentence on probation.

The director determined that the applicant had been convicted of two misdemeanors and denied the application on August 3, 2009.

On appeal, counsel claims that the applicant had only been convicted of one misdemeanor as the conviction for speeding only carried a maximum penalty of a fine of \$150.00 and did not provide for any jail time.

Although section 40-6-1 of the Georgia Code states that any violation in this chapter is a misdemeanor, the section also provides:

(b) Unless a different maximum fine or greater minimum fine is specifically provided in this chapter for a particular violation, the maximum fine which may be imposed as punishment for a first offense of violating any lawful speed limit established by or pursuant to the provisions of Article 9 of this chapter by exceeding a maximum lawful speed limit:

(5) By 19 or more but less than 24 miles per hour shall not exceed \$150.00.

Therefore, the speeding conviction cannot be considered a misdemeanor for immigration purposes.

The evidence of record reflects that the applicant has one misdemeanor conviction, and it does not render him ineligible for TPS under the provision of section 244(c)(2)(B)(i) of the Act and the related regulation in 8 C.F.R. § 244.4(a). There are no other known grounds of ineligibility; therefore, the director's decision to deny the application will be withdrawn, and the application will be approved.

An alien applying for TPS has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has met this burden.

**ORDER:** The appeal is sustained and the application is approved.