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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]

FILE: [Redacted] OFFICE: VERMONT SERVICE CENTER DATE: **JUN 25 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

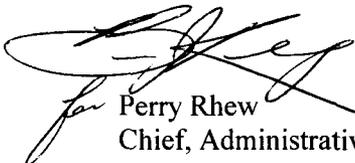
ON BEHALF OF APPLICANT:

[Redacted]

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 Vermont Service Center. 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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and a motion to reconsider. The motion will be granted. The AAO will return the matter for further action by the director.

The applicant is 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 director withdrew the applicant's TPS because the applicant had been convicted of at least two misdemeanors. The AAO, in dismissing the appeal on March 3, 2010, concurred with the director's findings.

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

A motion to reconsider must state the reason for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy ... [and] must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

On motion, counsel provides court documents signed November 17, 2009, by the Waushara County Circuit Court Judge of Wisconsin indicating that the applicant's convictions of violating Wisconsin Statute § 343.44(1)(b), operating a vehicle while revoked, in Case nos. [REDACTED] and [REDACTED] were vacated effective October 21, 2009, due to procedural defect.<sup>1</sup>

The Board of Immigration Appeals held that a conviction vacated for failure of the trial court to advise the alien defendant of the possible immigration consequences of a guilty plea is no longer a valid conviction for immigration purposes. *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006).

In this case, the dismissal of the applicant's convictions in Case nos. [REDACTED] and 2006CM00243 were vacated on the merits, and was not rehabilitative. Therefore, the applicant was not convicted, for immigration purposes, of the misdemeanor offenses noted above.

On motion, counsel asserts that the applicant's remaining convictions are classified as civil forfeiture offenses not criminal offenses under Wisconsin law. Counsel asserts that the maximum imprisonment for operating a vehicle with .10 percent or more alcohol (Wisconsin Statute § 346.63(1)(b)) and operating a vehicle without a valid license (Wisconsin Statute § 343.05(3)(a)) is five days or less. Counsel asserts that the decisions of the director and the AAO are in

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<sup>1</sup> The warnings required under Wisconsin Statute. §971.08(1)(c) were not given by the court during the plea colloquy.

contradiction with the decision handed down in *United States v. Devenport*, 131 F.3d 604 (7<sup>th</sup> Cir. 1997).

The maximum punishment for a first offense of operating a vehicle with .10 percent or more alcohol is a fine not less than \$150.00 or more than \$300.00. Likewise, the maximum penalty upon a first conviction of operating a vehicle without a valid license is a fine of \$200.00. *See* Wisconsin Statute §§ 346.65(2) and 343.05(5)(b)1.

The evidence of record reflects that the applicant has no misdemeanor convictions under the related regulations in 8 C.F.R. § 244.4(a), and there are no other known grounds of ineligibility. Therefore, the decision of the director to withdraw the applicant's TPS and to deny the re-registration application, and the decision of the AAO upholding the director's decision will be withdrawn. However, the validity period of the applicant's fingerprint check has expired.

Accordingly, the case will be returned for the purpose of sending the applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements. Following completion of this requirement, 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 decisions of the Director, Vermont Service Center, dated June 8, 2009, and of the AAO dated March 5, 2010, are withdrawn. The motion is granted and the matter is returned for further action by the director.