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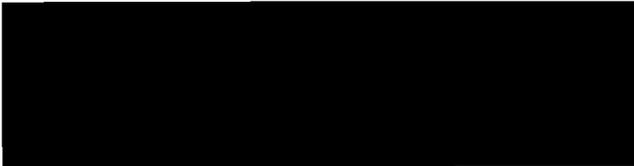
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: **MAY 05 2010**
[EAC 03 214 50932]
[EAC 09 196 50002 – MOTION]

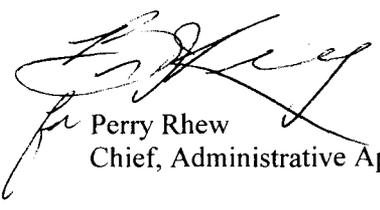
IN RE: Applicant: [REDACTED]

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.


Perry Rhew
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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 now before the AAO on motion to reopen and 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 he failed to submit the requested court dispositions for his 2006 arrests. On appeal, the applicant provided court documents which reflect that the offenses from his arrests on October 6, 2006 and November 19, 2006 had been dismissed. However, upon a de novo review of the record of proceedings, the AAO dismissed the appeal on May 27, 2009, as the applicant had failed to submit the final court dispositions for his other arrest that occurred on December 20, 2007, for criminal contempt and resisting arrest.

On motion, counsel asserts that the charges stemming from the applicant's arrest in 2007 resulted in the convictions of two violations. Counsel submits final court dispositions for the criminal charges of December 20, 2007.

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).

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The regulation at 8 C.F.R. § 244.1 defines "misdemeanor" as 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.

On motion, counsel submits the court documents for the December 20, 2007, charges. According to final court dispositions, on August 20, 2008, each charge was reduced to

harassment in the 2nd degree (New York Penal Law section 240.26), both violations. [REDACTED]

The issue now is whether New York offenses considered to be “violations” should constitute disqualifying convictions for “misdemeanors” in determining TPS eligibility under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4.

Violations committed in the State of New York are not considered “crimes” under state law, do not constitute misdemeanors or felonies, and may not be punished by more than 15 days of imprisonment. *See* New York Penal Law § 10.00(3), (4) and (6).

Pursuant to the Memorandum for Service Center Operations and the AAO dated January 17, 2010, for purposes of the TPS statute and regulations, United States Citizenship and Immigration Services (USCIS) has determined that New York violations should not be considered disqualifying misdemeanors.

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 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 applicant has no misdemeanor convictions and there are no other known grounds of ineligibility. Therefore, the previous decisions of the director and the AAO will be withdrawn. However, the validity period of the applicant’s fingerprint check has expired.

Accordingly, the matter will be returned for the purpose of sending the applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements. Pursuant to the memorandum issued on January 17, 2010, a new biometrics fee shall not be required in this case, as the adjudication of the applicant’s appeal was placed on hold pending issuance of this guidance. 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 27, 2008, and of the AAO dated May 27, 2009, are withdrawn. The motion is granted and the matter is returned for further action by the director.