

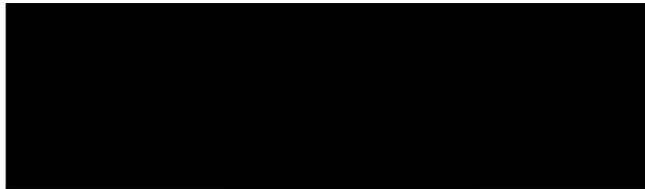
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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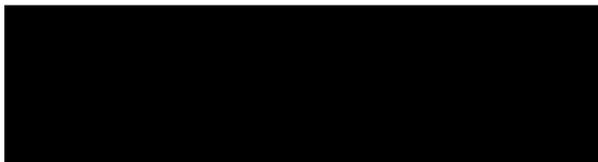
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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: **MAY 06 2010**  
[EAC 01 195 52425]  
[EAC 10 088 50298 – motion]

IN RE: Applicant: [Redacted]

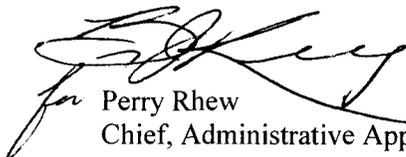
APPLICATION: Application for Temporary Protected Status under Section 244 of the  
Immigration and Nationality Act, 8 U.S.C. § 1254

IN 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.

  
for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was 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 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 denied the application because he found the applicant had been convicted of two misdemeanors in the United States. The AAO, in dismissing the appeal, on January 16, 2008, concurred with the director's findings. On motion, counsel asserts that the applicant's convictions are violations under the New York Penal Law and, therefore, do not constitute as misdemeanors for immigration purposes.

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

The record reflects that on May 23, 2000, the applicant was convicted in the Suffolk County District Court of New York of two counts of disorderly conduct, a violation of PL 240.20.

The issue in this proceeding 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 director's decision to deny the TPS application and the AAO's decision affirming the director's finding 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 March 19, 2003, and of the AAO dated January 16, 2008, are withdrawn. The motion is granted and the matter is returned for further action by the director.