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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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DATE: **NOV 02 2011** Office: VERMONT SERVICE CENTER FILE: [REDACTED]

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider, which will be dismissed. The AAO, however, will reopen the matter on a service motion pursuant to 8 C.F.R. § 103.5(a)(5)(ii). The case will be remanded for further action by the director.

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 may withdraw the status of an alien granted TPS 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 the applicant's TPS because a review of the administrative record indicated that the applicant had been convicted of illegal entry into the United States on April 15, 1988, June 2, 1999, and August 18, 1999, all misdemeanors. The AAO, in dismissing the appeal on November 30, 2009, concurred with the director's findings.

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).

On motion, counsel asserts that he is in the process of obtaining the court dispositions, and will forward the dispositions to the AAO upon receipt.

The regulations, however, do not provide for the extension of time to supplement the record on motion, but require documentary evidence to be submitted with the motion. 8 CFR 103.5(a)(2).

On motion, counsel asserts that the record contains no court dispositions for the three alleged convictions for illegal entry into the United States. Counsel states, [t]he Service relies on the Federal Bureau of Investigations (FBI) records to determine that the Applicant has such convictions." Counsel further asserts that the FBI report on its own is not sufficient to prove the convictions.

As counsel failed to establish that the decision was incorrect based on the evidence of record at the time of the initial decision and fails to cite precedent decisions supporting a motion to reconsider, the motion will be dismissed.

Nevertheless, the AAO will reopen the proceedings on a service motion pursuant to 8 C.F.R. § 103.5(a)(5)(ii).

The AAO, in dismissing the appeal, upheld the director's finding solely based on a Federal Bureau of investigations (FBI) report.

The instructions regarding the usage of the FBI report, and the provisions of 28 C.F.R. § 50.12, state, in part:

If the information on the record is used to disqualify an applicant, the official making the determination of suitability for licensing or employment shall provide the applicant the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. The deciding official should not deny the license or employment based on the information in the record until the applicant has been afforded a reasonable time to correct or complete the information, or has declined to do so.

While the record contains the criminal complaints for the applicant's arrests on April 15, 1998 and June 2, 1999, the judgment and convictions documents were not entered into record. The record also does not indicate that the applicant was given the opportunity to submit the judgment and conviction documents for those arrests including the arrest on May 5, 2006, for driving under the influence.

The case is remanded for inclusion of all adverse evidence which has been cited as supporting the decision to withdraw TPS. If such evidence cannot be located, or if the evidence in the director's possession differs from that described by the director, a new decision must be rendered. The director may request any additional evidence that he considers pertinent to assist with the determination of the applicant's eligibility for TPS.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The decisions of the director and the AAO are withdrawn. The case is remanded for further action consistent with the above and entry of a decision.