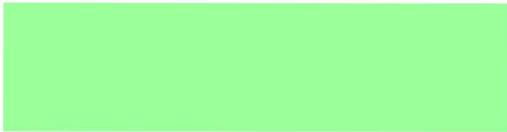




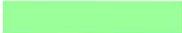
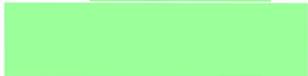
U.S. Citizenship
and Immigration
Services

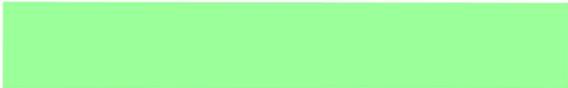
(b)(6)



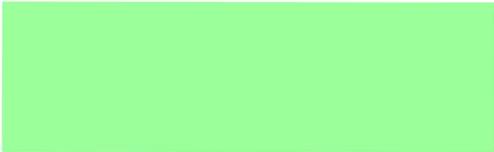
DATE: JUN 28 2013

Office: VERMONT SERVICE CENTER

FILE: 


IN RE: Applicant: 

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Ron Rosenberg
Acting 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 reopen and a motion to reconsider. The motions will be granted. The AAO will remand the matter for further action by the director.

The applicant is a native and citizen of Honduras 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 TPS because the applicant had been convicted of two misdemeanors in the United States. The AAO, in dismissing the appeal on October 19, 2011, concurred with the director findings as no credible evidence was submitted indicating that the convictions had been overturned due to an underlying procedural or constitutional defect in the merits of the case.

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 reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration (USCIS) 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 the applicant does not have two misdemeanor convictions as they have been properly vacated and dismissed. Citing several case laws including *Padilla v. Kentucky*, 130 S. Ct. 1473 (U.S 2010) counsel asserts that the convictions were reopened for violations of the applicant's constitutional rights to competent counsel and due process, and for violations of his South Carolina statutory rights and criminal procedural rights.

Counsel submits a Notice of and Motion to Reopen Case filed before the [REDACTED], and an Appeal of Denial to Reopen Cases filed before the [REDACTED] South Carolina, along with:

- A Judgment from the Circuit Court dated April 25, 2011, indicating that the court found that the lower court failed to advise the applicant of the collateral consequences of pleading guilty and remanded the case back to the lower court for a new trial. [REDACTED]
- Certified court documents from the [REDACTED] indicating that on August 3, 2011, the charges, failure to stop and render aid and giving false information to law enforcement officer, were dismissed.

On motion, the applicant has provided sufficient evidence to indicate that the dismissal of his convictions were vacated on the merits, and was not rehabilitative. Therefore, the applicant was not convicted, for immigration purposes, of the misdemeanor offenses noted above.

The applicant has no misdemeanor convictions and no other known grounds of ineligibility have been cited by the director. Therefore, the director's decision to withdraw the applicant's TPS 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 October 5, 2010, and of the AAO dated October 19, 2011, are withdrawn. The motion is granted and the matter is remanded for further action by the director.