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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Service  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

DATE: **MAY 12 2014**

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
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 applicant through counsel submitted a Notice of Appeal or Motion (Form I-290B) and indicated at Part 3 that he was filing an appeal from the AAO's decision. A motion, rather than an appeal, is the proper forum in this case, pursuant to 8 C.F.R. § 103.5(a)(1)(i). The appeal, therefore, will be treated as a motion to reopen. The motion will be denied, and the previous decision of the AAO will be affirmed.

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. On June 17, 2013, the director denied the application because she found the applicant inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to a drug-related conviction. The director concluded that the applicant failed to comply with the request establishing the amount, in grams, of marijuana involved. The AAO, in dismissing the appeal on March 19, 2014, determined that without the police report or complaint/indictment indicating the amount of marijuana in the applicant's possession at the time of his arrest, the applicant remained inadmissible under section 212(a)(2)(A)(i)(II) of the Act.

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 July 26, 1990, the applicant pled guilty to possession of a brown leafy vegetation believed to be marijuana under 50 grams, a violation of N.J.S. § 2C:35-10a(4). On March 15, 2010, the conviction was expunged.

On motion, counsel resubmits the court documentation and again argues that U.S. Citizenship and Immigration Services misinterpreted the law and failed to follow the holding in *Lujan-Armendariz v. INS*, 222 F.3d 728 (C.A. 9, 2000). Counsel asserts that the applicant is entitled to treatment under the equivalent of the Federal First Offender Act. To qualify for first offender treatment under federal laws, the applicant must show that (1) he has been found guilty of simple possession of a controlled substance; (2) he has not, prior to the commission of the offense, been convicted of violating a federal or state law relating to controlled substances; (3) he has not previously been accorded first offender treatment under any law; and (4) the court has entered an order pursuant to a state rehabilitative statute under which the criminal proceedings have been deferred or the proceedings have been or will be dismissed after probation. *Cardenas-Uriate v. INS*, 227 F.3d 1132, 1136 (9<sup>th</sup> Cir. 2000). In the present case, the applicant has not established all the essential requirements.

Counsel asserts, in pertinent part, "[t]o require [the applicant] to trace behind the court records in order to determine that any other finding of a controlled substance could have been possible completely diminishes the purpose of obtaining official court records, in determining the nature of an offense." Counsel further asserts that the AAO is not within its authority to have the

applicant obtain additional documentary evidence that may shed any additional light as to the nature of the conviction.

The court documentation (complaint) cites the statute from which the applicant was charged (N.J.S. 2C:35-10(4)) and indicates that the applicant was in possession of a brown leafy vegetation believed to be marijuana "under 50 grams."

The amount of brown leafy vegetation believed to be marijuana in the applicant's possession at the time of his arrest may have an effect upon the applicant's admissibility. The criminal complaint provided throughout the proceedings is not sufficient as it only cites to the statute and not the actual amount found in the applicant's possession.

The applicant is applying for benefits under the federal law. Therefore, the burden of proof is upon the applicant to establish that he meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by U.S. Citizenship and Immigration Services (USCIS). 8 C.F.R. § 244.9(a). It has been long held by the Board of Immigration Appeals that where the amount of a controlled substance cannot be readily determined from the conviction record, the alien must present credible and convincing evidence independent of his conviction record to meet his burden of showing that his conviction involved 30 grams or less of marijuana. *See Matter of Grijalva*, 19 I&N Dec. 713, 718 (BIA 1988); *see also* section 291 of the Act, 8 U.S.C. § 1361.

Accordingly, the court documents submitted pertaining to the applicant's conviction cannot uphold a determination that the applicant is admissible for the benefit sought. On motion, the applicant has not met that burden to overcome the previous decision of the AAO. Therefore, the AAO decision will not be disturbed and the motion is dismissed.

**ORDER:** The motion is dismissed. The previous decision of the AAO dated March 19, 2014, is affirmed.