



U.S. Citizenship
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Services

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FILE:

Office: Vermont Service Center

Date: AUG 29 2007

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IN RE:

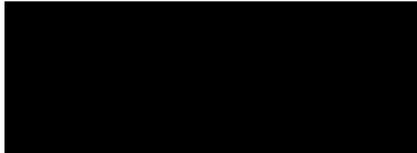
Applicant:



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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The motion to reopen will be dismissed.

The applicant claims to be 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 denied the application because he found the applicant inadmissible under section 244(c)(2)(B)(i) of the Act due to conviction of multiple misdemeanors in the United States.

A subsequent appeal from the director's decision was dismissed on April 15, 2003, after the Director of the AAO also concluded that the applicant was ineligible for TPS under section 244(c)(2)(B)(i) of the Act due to conviction of multiple misdemeanors in the United States.

The applicant subsequently filed a Motion to Reopen asserting that the Chief of the AAO's decision was incorrect as a matter of law. The case was reopened and the appeal was again dismissed on December 5, 2005. The applicant then appealed to the Board of Immigration Appeals, which was rejected.

On motion to reopen, counsel for the applicant asserts that each of the Chief's decisions was incorrect as a matter of law. Specifically counsel asserts that the AAO improperly used the term offenses in categorizing crimes which constitute a misdemeanor for immigration purposes, and that a State's definition should be used instead.

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). Motions for the reopening of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110.

The AAO is not persuaded by counsel's assertion that the distinction between "crime" and "offense" is significant, primarily because regulatory interpretation of this subject matter is delegated to CIS, and in this particular instance the AAO. *See* U.S. Const., Art. VI, cl. 2; *see also* Homeland Security Act of 2002, Pub. L. 107-296; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii). Whether a particular offense under state law constitutes a "misdemeanor" for immigration purposes is strictly a matter of federal law. *See Franklin v. INS*, 72 F.3d 571 (8th Cir. 1995); *Cabral v. INS*, 15 F.3d 193, 196 n.5 (1st Cir. 1994). In this case CIS' interpretation of offenses which constitute misdemeanor crimes is reasonable and consistent with statutory purpose. *Chevron USA, Inc. V. NRDC*, 467 U.S. 837 (1984).

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The Motion to Reopen and Reconsider fails to establish that the Chief's decision was incorrect as a matter of law and will be dismissed.



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ORDER: The motion is dismissed.