

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship and Immigration Services

**PUBLIC COPY**

*MA*

[REDACTED]

FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: NOV 05 2007  
[EAC 02 297 51015]

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:**

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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and the case is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 record reveals that the applicant filed his TPS application during the initial registration period. The Director, VSC, withdrew the approval of the TPS application on February 14, 2007, pursuant to 8 C.F.R. § 244.14(a)(3), because the applicant had failed to successfully re-register. However, the director should have withdrawn TPS pursuant to 8 C.F.R. § 244.14(a)(1) because the applicant, by failing to provide requested court records necessary for the adjudication of his application, had become ineligible for TPS.

On appeal, counsel states that the applicant does not have any convictions that would preclude him from being granted TPS status; and that the applicant never intended to abandon his application or concede withdrawal of his TPS application. Counsel submits copies of court dispositions as evidence on appeal.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

Under section 101(a)(48) of the Act:

- (A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where-
  - (i) A judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
  - (ii) The judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

*Felony* means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

*Misdemeanor* means a crime committed in the United States, either

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or

(2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor.

The record reveals the following offenses:

1. On March 17, 2003, the applicant was arrested by the Chelsea Police Department of Massachusetts, and charged with Assault W/Dangerous Weapon in violation of ML 265/15B/B; he pled guilty to assault on September 3, 2003, and was sentenced to a one-year period of probation. (Case number [REDACTED])
2. On March 22, 2003, the applicant was arrested by the Chelsea Police Department of Massachusetts, and charged with Destruction of Property in violation of ML 266/127/A; he pled guilty to destruction of property on September 3, 2003, and was sentenced to a one-year period of probation. (Case number [REDACTED])
3. On March 22, 2003, the applicant was arrested by the Chelsea Police Department of Massachusetts, and charged with Witness Intimidation in violation of ML 268/13B/A; he pled guilty to witness intimidation on September 3, 2003, and was ordered to pay a \$90.00 fine. (Case number [REDACTED])
4. On April 11, 2004, the applicant was arrested by the Chelsea Police Department of Massachusetts, and charged with Miscellaneous Municipal Ordinance/By Law Violation in violation of ML 666666; he was found responsible by the court on November 3, 2004, and was ordered to pay a \$100.00 fine. (Case number [REDACTED])
5. On February 19, 2005, the applicant was arrested by the Boston Police Department of Massachusetts, and charged with Assault W/Dangerous Weapon in violation of ML 265/15B/A; the charge was dismissed for want of prosecution on January 11, 2006. (Case number [REDACTED])
6. On February 19, 2005, the applicant was arrested by the Boston Police Department of Massachusetts, and charged with Destruction of Property in violation of ML 266/127/A; the charge was dismissed for want of prosecution on January 11, 2006. (Case number [REDACTED])

On appeal, counsel states that the Commonwealth of Massachusetts (Assistant District Attorney) appealed the Motion to Dismiss Conviction previously granted by the District Court in numbers 1 and 2 above. Counsel further states that the Court vacated the cases on August 15, 2006. Counsel also states that in number 4 above, the applicant was found "responsible" for a "decriminalized" violation and was only ordered to pay a fine. Counsel states that the charges stemming from the applicant's arrests in numbers 5 and 6 above were dismissed for "want of prosecution" on January 11, 2006. Counsel concludes by stating that the applicant does not have any convictions that would impede his eligibility for TPS.

The record of proceeding reveals that the applicant has been convicted of two misdemeanor offenses committed in the United States. Although the Massachusetts court decided to continue the applicant's case for possible dismissal upon completion of the terms of probation in numbers 1 and 2 above, the applicant pled guilty and his liberty was restrained in that he was placed on probation or court supervision to enter and

complete programs as directed by the probation department. Therefore, the applicant has been "convicted" as defined in Section 101(a)(48)(A) of the Act.

Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not vacate a conviction on the merits are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan*, I.D. 3377 (BIA 1999). Although the cases detailed in numbers 1, 2, and 3 above were dismissed pursuant to the applicant's completion of his probation, the applicant remains convicted of these offenses for immigration purposes.

The charges in the instant case are considered misdemeanor offenses as defined in 8 C.F.R. § 244.1. An applicant who has been convicted of two misdemeanors or one felony in the United States is ineligible for TPS. 8 C.F.R. § 244.4(a). The applicant remains convicted of one felony and two misdemeanor offenses, and therefore, the director's decision to withdraw the approval of the TPS application will be affirmed pursuant to 8 C.F.R. § 244.14(a)(1).

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

**ORDER:** The appeal from the denial of the application for re-registration or renewal of temporary treatment benefits is dismissed.