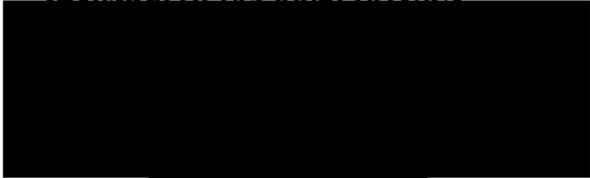




U.S. Citizenship  
and Immigration  
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prevent clearly unwarranted  
invasion of personal privacy**



*ML*

FILE: [REDACTED]  
[WAC 05 146 72627]

Office: CALIFORNIA SERVICE CENTER

Date: JUL 02 2007

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:



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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal 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 record reveals that the applicant filed a TPS application during the initial registration period on April 3, 2001, under Citizenship and Immigration Services (CIS) receipt number SRC 01 168 57016. The Director, Texas Service Center, approved that application on July 31, 2002.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on February 23, 2005, and indicated that he was re-registering for TPS.

The record reveals the following offenses:

- (1) On November 23, 2003, the applicant was arrested by the Colfax County, Nebraska Sheriff's Office for "DUI – 1<sup>st</sup> Offense."
- (2) On December 25, 2004, the applicant was arrested by the Colfax County, Nebraska Sheriff's Office for "Driving Under Influence Liquor, 2<sup>nd</sup>."

The director withdrew temporary protected status because the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel for the applicant submits the requested court documentation and submits an Order Setting Aside Conviction for one of his convictions. According to the documentation provided by the applicant:

- (1) On September 24, 2002, the applicant was convicted of "Driving Under Suspension – 1<sup>st</sup> Offense", a misdemeanor.
- (2) On December 30, 2003, the applicant was convicted of "DWI – 1<sup>st</sup> Offense", a misdemeanor.
- (3) On February 5, 2004, the applicant was convicted of "DUI – 1<sup>st</sup> Offense", a misdemeanor.
- (4) On April 20, 2004, the applicant was convicted of "Driving Under Suspension," a misdemeanor.
- (5) On November 8, 2004, the applicant was convicted of "No Proof of Insurance", a misdemeanor.

- (6) On September 13, 2005, the applicant was convicted of “DUI – 1<sup>st</sup> Offense”, a misdemeanor.

The applicant also provided a copy of an Order Setting Aside Conviction for the September 13, 2005 conviction. However, 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*, 22 I&N Dec. 512, (BIA 1999). Therefore, for Immigration purposes, the September 3, 2005 conviction is still considered a conviction.

The applicant is ineligible for TPS due to his record of six misdemeanor convictions, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

Beyond the decision of the director, it is noted that the applicant has provided insufficient evidence to establish his qualifying continuous residence since February 13, 2001 and continuous physical presence from March 9, 2001 to the filing date of the TPS application. Therefore, the application must be denied for these reasons as well.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 will be dismissed.