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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
*Office of Administrative Appeals MS 2090*  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]  
[WAC-01-171-50156]

Office: VERMONT SERVICE CENTER

Date:

SEP 25 2009

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 Vermont Service Center. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Griscom". Below the signature, there is a small "for" handwritten in cursive script.

John F. Griscom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 a TPS application during the initial registration period on March 29, 2001, under receipt number WAC0117150156. The Director, California Service Center, approved that application on July 22, 2003.

The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1).

The record reveals the following offenses:

- (1) On November 30, 1999, the applicant was arrested by the Los Angeles, California Police Department for sexual intercourse with a minor. No charges were filed as the applicant was subsequently released by the district attorney's office.
- (2) On May 7, 2001, the applicant was arrested by the Los Angeles, California Police Department for unlicensed driver and no proof of car insurance. [REDACTED]
- (3) On December 27, 2000, the applicant was arrested by the Los Angeles, California Police Department for burglary. [REDACTED]

Pursuant to a notice dated January 31, 2008, the applicant was requested to submit the final court disposition for all charges. In response, the applicant submitted the requested court dispositions. The disposition for number two indicated that the applicant was convicted on May 24, 2001 of driving without a license, a violation of section 12500(a) VC, a misdemeanor. Imposition of sentence was suspended and the applicant was ordered to pay a fine or serve five days in jail and placed on summary probation for one year. The disposition for number three indicated that the applicant was convicted on February 27, 2001 of burglary, a violation of section 459 PC, a misdemeanor.

The director determined that the applicant had been convicted of a felony for the burglary charge, and withdrew the applicant's TPS on July 28, 2008.

On appeal, counsel for the applicant correctly states that the director erred in determining that the applicant had been convicted of a felony offense. The court disposition clearly shows that the

charge was reduced to a misdemeanor prior to sentencing pursuant to section 17(b)(4) PC. Consequently, the applicant was convicted of a misdemeanor on February 27, 2001.

Counsel also contends that the May 24, 2001 conviction was reduced to an infraction and submits court documentation reflecting that on September 8, 2008, a motion to reduce the misdemeanor to an infraction was filed. On September 23, 2008, the court granted the motion to reduce the offense, driving without a license, to an infraction pursuant to section 17(d)(1) and (2) PC.

The misdemeanor conviction of driving without a license was reduced to an infraction more than six years after the applicant had completed his probation. If the reduction was a result of a rehabilitative action by the court based on the applicant's completion of the terms of his sentencing and probation, the court's action is generally not recognized in immigration proceedings.

Under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the INA, no effect is to be given, in immigration proceedings, to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction. An alien remains convicted for immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt. *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), *Matter of Roldan*, 22 I. & N. Dec. 512 (BIA 1999). State rehabilitative actions that do not vacate a conviction on the merits as a result of underlying procedural or constitutional defects are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan, id.* There is nothing in the record, and counsel has not offered any evidence on appeal to suggest that the applicant's original misdemeanor conviction was reduced to an infraction because of a procedural or constitutional defect in the underlying trial court proceedings.

The applicant is ineligible for TPS because of his two misdemeanor convictions. 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw the applicant's TPS will be affirmed.

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 is dismissed.