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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] OFFICE: VERMONT SERVICE CENTER DATE: MAY 04 2010

[EAC 08 213 70045]

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 or reopen, as required by 8 C.F.R. §103.5(a)(1)(i).

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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

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.

The director withdrew TPS because the applicant had been convicted of two or more misdemeanors in the United States.

On appeal, counsel asserts that two of the applicant's offenses occurred when he was a juvenile and, therefore, he has only one misdemeanor conviction.[1]

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).

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).

"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. 8 C.F.R. § 244.1.

The record reflects the applicant's criminal history in the state of Utah as follows:

1. On November 12, 1995, the applicant was arrested and subsequently charged with violating Utah Code Ann. section 53-3-202, never obtained license, and section 41-1A-1305, license plate/registration card violations, both Class C misdemeanors. On November 29, 1996, the applicant pled guilty to both offenses. [redacted]

2. On June 11, 2000, the applicant was arrested and subsequently charged with violating Utah Code Ann. Section 76-5-103, aggravated assault, a 3rd degree felony. On October 5, 2000, the charge was amended to a Class A misdemeanor. On the same date, the applicant pled guilty to the charge. The applicant was sentenced to a term of 365 days. [redacted]

[1] The applicant was born on December 6, 1977.

On appeal, counsel submits court documents from the Salt Lake County Third Judicial District Court of Utah, which reflects that: a) on March 10, 2010, the Class C misdemeanors in number one above were reduced to infractions; and b) on March 13, 2008, the Class A misdemeanor in number two was reduced to Class B misdemeanor with a sentence term of zero to six months.

Counsel, in citing *Matter of Devison*, 22 I&N Dec. 1362 (BIA 2000),[2] asserts that the applicant's case is a little different because the traffic convictions were not adjudicated in juvenile court. Counsel further asserts that the applicant pled guilty to the two violations without the assistance of an attorney. Counsel contends that the convictions should not be held against him.

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.*

In this case, there is no evidence in the record to suggest that the applicant's convictions were overturned on account of an underlying procedural or constitutional defect in the merits of the case. *See Ramirez-Castro v. INS, 287 F.3d 1172, 1174 (9th Cir. 2002); Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003); *Matter of Roldan*, 22 I. & N. Dec. 512 (BIA 1999). Therefore, despite the reductions, the offenses remain valid misdemeanor convictions for immigration purposes.

The applicant is ineligible for TPS due to his three misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Counsel's statements made on appeal have been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above. Consequently, the director's decision to withdraw 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.

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[2] Adjudication of youthful offender status or juvenile delinquency is not a conviction for immigration purposes.

The record reflects that on May 10, 2006, a Form I-862, Notice to Appear, was issued. On March 3, 2009, the applicant was scheduled for a master hearing before the Immigration Court. The applicant's case was administratively closed by an immigration judge.[3]

ORDER: The appeal is dismissed.

[3] Administrative closing of a case does not result in termination of the proceedings. It is merely an administrative convenience, which allows the removal of cases from the calendar in appropriate situations. *See Matter of Gutierrez-Lopez*, 21 I&N Dec. 479 (BIA 1996).