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**U.S. Citizenship
and Immigration
Services**

M1

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: JUL 30 2007

[WAC 05 112 74434]

IN RE:

Applicant:

[REDACTED]

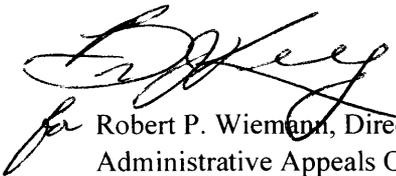
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.


for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office 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 an initial TPS application on May 4, 2001, under CIS receipt number SRC 01 204 54925. The director denied that application on March 28, 2005, because the applicant had been convicted of two misdemeanors, and therefore, is ineligible for TPS. The record does not reflect that the applicant filed an appeal or a motion to reopen the decision to deny the application.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on January 20, 2005, under CIS receipt WAC 05 112 74434, and indicated that she was re-registering for TPS. The director denied that application on June 30, 2005, because the applicant's prior TPS application had been denied and the applicant was ineligible for re-registration.

On appeal, the applicant reasserts eligibility for TPS, and states that she admits having made mistakes leading to her convictions and feels that she has paid the price for the mistakes and successfully completed probation. The applicant does not submit any additional evidence on appeal.

The record reflects that the applicant was convicted of:

- 1) Theft \$20-\$200 in CCCL#7/Hancock, a misdemeanor, on April 12, 1990, and sentenced to 3 days jail, and fined \$100.00;
- 2) Theft 200-\$750 in CCCL#12/Terracina, a misdemeanor, on February 10, 1994, and sentenced to 180 days County Jail/probation 1 year.

While the applicant states on appeal that her charges were dismissed after she completed probation, an administrative action that allows a defendant to withdraw her plea and have the charge dismissed after she has successfully completed probation, is still a conviction for immigration purposes. Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions which 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, the applicant remains convicted of the misdemeanor offenses for immigration purposes.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

In this case, the applicant has not previously been granted TPS. Therefore, she is not eligible to re-register for TPS. Consequently, the director's decision to deny the application 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.