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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

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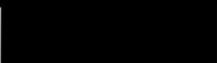


U.S. Citizenship  
and Immigration  
Services



SEP 25 2009

FILE:



Office: VERMONT SERVICE CENTER

Date:

[WAC 02 061 50495]

IN RE:

Applicant:



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

ON BEHALF OF APPLICANT: SELF-REPRESENTED

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).

John F. Grissom  
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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 December 10 2001, under receipt number WAC 02 061 50495. The Director, California Service Center, approved that application on August 19, 2003.

The director may withdraw the status of an alien granted Temporary Protected Status 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 director withdrew temporary protected status because the applicant had been convicted of two misdemeanors.

On appeal, the applicant states that he completed the conditions set by the Tucson Courts and the two cases would probably be set aside.

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).

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. 8 C.F.R. § 244.1.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The record reveals the following offenses:

- (1) On May 30, 1998, the applicant was arrested by the Tucson, Arizona Sheriff's Department for "Making a False Report." (Docket # CR98-81117A-MI).
- (2) On December 13, 2002, the applicant was arrested by the Phoenix, Arizona DPS for "DUI Liquor/Drugs/Vapors/Combo," "DUI W/BAC of .08 or More," and "Extreme DUI – BAC > .15" (Docket # TR03-001777-A CR).

Pursuant to a letter dated September 19, 2008, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant submitted the requested documents. According to the final court dispositions, on July 6, 1998, the applicant was convicted of "Making a False Report," a misdemeanor, and, on March 7, 2003, the applicant pled guilty to and was found guilty of "DUI Liquor/Drugs/Vapors/Combo," a misdemeanor.

The director withdrew temporary protected status because the applicant had been convicted of two misdemeanors in the United States.

On appeal, the applicant claims that he has completed all of the conditions set by the Tucson Justice Court and these two cases would probably be set aside. The applicant states that once they are set aside, they will no longer be considered convictions. The applicant also states that he received a notice indicating two arrests in Nashville, Tennessee, and that he had never been in Nashville. There is nothing in the record to indicate that the applicant had been arrested in Nashville, and that notice appears to have been inadvertently sent to the applicant.

To date, the applicant has not presented any evidence or documentation that would indicate that his convictions have been set aside, or that they are in the process of being set aside. Furthermore, even if the convictions had been set aside, 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).

However, the Board of Immigration Appeals, in *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999), held that under the statutory definition of “conviction” provided at section 101(a)(48)(A) of the Act, 8 U.S.C. § 110(a)(48)(A), 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 by operation of a state rehabilitative statute. Additionally, 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*. As a result, the applicant remains convicted, for immigration purposes, of the misdemeanor offenses. Consequently, the director's decision will be affirmed.

The applicant is ineligible for TPS because of his misdemeanor convictions.

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.