

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

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

M<sub>1</sub>



FEB 24 2010

FILE:



OFFICE: VERMONT SERVICE CENTER

DATE:

[EAC 09 100 89060]

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:



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).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be 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 denied the application because the applicant had been convicted of at least two misdemeanors in the United States.

On appeal, the applicant asserts that he had filed a petition for relief for each conviction that was granted. The applicant asserts that since his last arrest in 1996, he has been a person of good moral character. The applicant asserts that according to section 101(f) of the Act, the director shall evaluate claims of good moral character on a case by case basis.

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 FBI report dated September 21, 2006, and the court documents in the record reflect the following offenses in the state of California:

1. On February 14, 1993, the applicant was arrested by the Los Angeles Police Department for violating section 245(a)(1) PC, assault with a deadly weapon, and section 417(a)(1) PC, exhibit deadly weapon other than firearm, both misdemeanors. On February 17, 1993, the applicant was convicted of violating section 417(a)(1) PC. The applicant was ordered to serve 30 days in jail and was placed on probation for two years. The remaining offense was dismissed. On September 23, 2008, the conviction was expunged in accordance with section 1203.4 PC. [REDACTED]
2. On May 24, 1996, the applicant was arrested by the Sheriff's Office in San Diego for violating section 484/488 PC, petty theft, a misdemeanor. The applicant was subsequently convicted of this offense and was ordered to pay a fine, serve one day in jail and was placed on probation for five years. On December 1, 2008, the conviction was expunged in accordance with section 1203.4 PC. [REDACTED]

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).<sup>1</sup> 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.*

The record before the AAO clearly establishes that the applicant has at least two misdemeanor convictions. In this case, there is no evidence in the record to suggest that either conviction was 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 (9<sup>th</sup> 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 expungements of the convictions, the offenses remain valid convictions for immigration purposes.

The AAO has reviewed the applicant's brief on appeal and the authorities cited therein, and conclude that the misdemeanor convictions continue to effect immigration consequences, and thus render the applicant ineligible for TPS. 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.

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.

---

<sup>1</sup> See *Murillo-Espinoza v. INS*, 261 F.3d 771, 774 (9<sup>th</sup> Cir. 2001) (expunged theft conviction still qualified as an aggravated felony); *Ramirez-Castro v. INS*, 287 F.3d 1172, 1174 (9<sup>th</sup> Cir. 2002) (expunged misdemeanor California conviction for carrying a concealed weapon did not eliminate the immigration consequences of the conviction); see also *de Jesus Melendez v. Gonzales*, 503 F.3d 1019, 1024 (9<sup>th</sup> Cir. 2007); *Cedano-Viera v. Ashcroft*, 324 F.3d 1062, 1067 (9<sup>th</sup> Cir. 2003) (expunged conviction for lewdness with a child qualified as an aggravated felony).