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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



M,

DATE: **JUN 22 2011**

Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Applicant: 

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

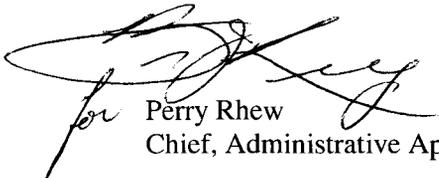
ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) 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 the applicant's TPS because the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant asserts, that he was arrested twice for the same crime. The applicant asserts, in part: "I was falsely accused of theft which it was not true, my legal council did not advise me properly and he not me, entered a plea agreement with the State." The applicant provides court documentation relating to his criminal history

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. Section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1).

An alien shall not be eligible for TPS 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. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception 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 actually served. Under this exception, for purposes of 8 C.F.R. § 244 of the Act, the crime shall be treated as a misdemeanor. 8 C.F.R. § 244.1.

The Federal Bureau of Investigation report dated June 17, 2009, reveals the following offenses in the state of Texas:

- On August 8, 2007, the applicant was arrested by the Hurst Police Department for two counts of burglary of habitation, a violation of Texas Penal Code section 30.02(c)(2).
- On January 22, 2008, the applicant was arrested by the Euless Police Department for two counts of burglary by habitation, a violation of Texas Penal Code section 30.02(c)(2).

On June 19, 2009, the director issued a Notice of Intent to Withdraw TPS, which requested the applicant to submit the certified final dispositions from the courts for each arrest above. The

applicant, however, failed to respond to the notice and on October 7, 2009, the director withdrew the applicant's TPS.

On appeal, the applicant submits court documentation in [REDACTED] from the Tarrant County Criminal District Court of Texas, which reflects that on January 22, 2008, the applicant had been arrested under warrant for failure to appear. On or about October 27, 2008, the applicant entered a plea of guilty or a plea of *nolo contendere* to two counts of burglary of a habitation, a felony of the second degree. The adjudication of guilt was deferred, and the applicant was placed on probation for four years

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Immigration and Nationality Act.

The court disposition submitted reflects that the applicant pled guilty or *nolo contendere* to the offenses and the judge ordered some form of punishment to the charges and a restraint on the applicant's liberty. Therefore, the applicant has been "convicted" of the offenses for immigration purposes.

The applicant's assertion that he has one conviction is without merit. The court documentation clearly reflects that the applicant was placed on community supervision for the period of four years for "Burglary of a Habitation X2."

Without certified documentation from the court indicating that the convictions have been vacated for underlying procedural or constitutional defect having to do with the merits of the case, the felony convictions continue to effect immigration consequences. *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006), *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), *Matter of Roldan*, 22 I. & N. Dec. 512 (BIA 1999).

The applicant's statements on appeal have been considered. The AAO, however, may only look to the judicial records to determine whether the person had been convicted of the crime, and may not look behind the conviction to reach an independent determination concerning guilt or innocence. *Pablo v. INS*, 72 F.3d 110, 113 (9th Cir. 1995); *Gouveia v. INS*, 980 F.2d 814, 817 (1st Cir. 1992); and *Matter of Roberts*, 20 I&N Dec. 294 (BIA 1991).

The applicant is ineligible for TPS due to his two felony convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). 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 TPS 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 from the withdrawal of the TPS application is dismissed.