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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

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DATE: MAR 13 2012

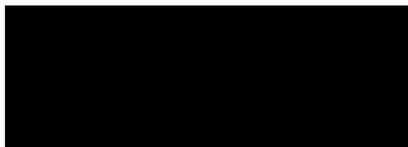
Office: VERMONT SERVICE CENTER

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:



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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

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**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 sustained.

The applicant is a native and citizen of El Salvador who was granted 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 misdemeanors in the United States.

On appeal, counsel for the applicant submits an Order from the State Court of Hall County, Georgia, which granted the applicant's Motion to Vacate Plea and Sentence.

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 TPS 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 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 Act.

On December 10, 2010, the applicant was requested to submit certified judgment and conviction documents from the courts for all arrests including his arrest on August 24, 2009 for battery-family violence. The applicant, in response submitted court documentation in Case no. [REDACTED] from the State Court of Hall County, Georgia, which indicated that on May 4, 2010, the applicant pled *nolo contendere* to violating O.C.G.A 16-5-23, simple battery, and O.C.G.A. 16-11-39, disorderly conduct, both misdemeanors. The applicant was sentenced to serve time in jail and was ordered to pay a fine.

Accordingly, the director concluded that the applicant had been convicted of two misdemeanors and withdrew TPS on March 28, 2011.

On appeal, counsel for the applicant submits an Order from the State Court of Hall County, Georgia, which granted the applicant's Motion to Vacate Plea and Sentence. The judgment, plea, and sentence were vacated as void *ab initio* on the grounds that the applicant's plea was not entered in a knowing and voluntary fashion of both state and federal constitutional standards of due process of law.

A conviction vacated for failure of the trial court to advise the alien defendant of the possible immigration consequences of a guilty plea is no longer a valid conviction for immigration purposes. *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006). 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).

In this case, the applicant's convictions in Case no. [REDACTED] were vacated on the merits, and were not rehabilitative. Therefore, the applicant is no longer convicted, for immigration purposes, of the misdemeanor offenses of disorderly conduct and simple battery.

The evidence of record reflects that the applicant has no misdemeanor or felony convictions under the related regulations in 8 C.F.R. § 244.4(a), and there are no other known grounds of ineligibility. Therefore, the director's decision to withdraw the applicant's TPS will, itself, be withdrawn.

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 met this burden.

**ORDER:**                   The appeal is sustained.