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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: MAY 14 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained

The applicant claims to be a native and citizen of Nicaragua 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 he determined that the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel asserts that the applicant is eligible for the benefit sought as he has only one misdemeanor conviction. Counsel states that the public nuisance conviction was vacated by the court [REDACTED]

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.

The director, in denying the application on September 23, 2011, determined that the applicant had been convicted of battery of a police officer, a violation of section 243(b) PC, and of public nuisance, a violation of section 372 PC, both misdemeanors.

The record, however, contains court documentation in Case no [REDACTED] from the Los Angeles County Superior Court of California, which indicates that [REDACTED], the court granted the motion to vacate the public nuisance conviction pursuant to section 1016.5 PC.

On appeal, counsel submits the court disposition in Case no [REDACTED] from the Municipal Court of Inglewood Courthouse Judicial District, Los Angeles County, California, which indicated that [REDACTED] a Motion to Vacate Judgment under section 1016.5 PC was

filed before the court. [REDACTED] the court granted the motion to vacate judgment. The plea of no contest taken [REDACTED] was withdrawn and the case was ordered dismissed.

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).

Counsel has provided certified documentation from the court indicating that the public nuisance conviction has been vacated for underlying procedural or constitutional defect having to do with the merits of the case. Therefore, this misdemeanor conviction no longer affects immigration consequences. *Matter of Adamiak, supra, Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), *Matter of Roldan*, 22 I. & N. Dec. 512 (BIA 1999).

The applicant has one misdemeanor conviction and it does not render the applicant ineligible for TPS under the provisions of section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a). There are no other known grounds of ineligibility; therefore, the director's decision to deny the application will 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