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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**

[REDACTED]

M1

DATE: **SEP 28 2012** Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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

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 California 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and 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 Haiti 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 a felony and two misdemeanors in the United States.

On appeal, the applicant submits court documentation from the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida indicating that on July 28, 2011, the misdemeanor offenses of May 5, 2000 were *nolle prosequi*.

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).

“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.

"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 court documentation in [REDACTED] from the Dade County Circuit and County Courts of Florida indicates that on May 26, 2000, the applicant entered a plea of *nolo contendere* to false statement on driver's license application, a violation of Florida Statute 322.212(1), a felony of the third degree; indecent exposure, a violation of Florida Statute 877.03, a misdemeanor of the second degree; and false identification given after arrest, a violation of Florida Statute 901.36(1), a misdemeanor of the first degree. Adjudication of guilt was withheld and the applicant was placed

on probation for one year, ordered to pay court costs, successfully complete the Jobs program and serve 50 hours of community service. On or about April 22, 2011, the applicant sought post-conviction relief. On July 28, 2011, the convictions were *nolle prosequi*.

On August 9, 2012, the AAO sent a notice to the applicant, which advised him of the court disposition in [REDACTED] and that without certified documentation from the court indicating that these convictions had been vacated for underlying procedural or constitutional defect having to do with the merits of the case, the convictions would remain valid for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999).

The applicant, in response, submits from the Circuit Court Dade County-Criminal Division, the complaint/arrest affidavit, the indictment and court disposition relating to his arrest on May 5, 2000, and subsequent conviction on May 26, 2000 for the above offenses and an Order Terminating Probation issued on February 19, 2002. On July 28, 2011, the court vacated the finding of guilt and the case was *nolle prosequi*.

However, as discussed by the AAO in its letter of August 9, 2012, under the statutory definition of "conviction" at section 101(a)(48)(A) of the Act, no effect is to be given in immigration proceedings to a state action which purports to reduce, 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. *Matter of Roldan, supra*. Any subsequent rehabilitative action that overturns a state conviction, other than on the merits or for a violation of constitutional or statutory rights in the underlying criminal proceedings, is ineffective to expunge a conviction for immigration purposes. *Id.* at 523, 528. *See also Matter of Rodriguez-Ruiz*, 22 I&N Dec. 1378, 1379 (BIA 2000) (conviction vacated under a state criminal procedural statute, rather than a rehabilitative provision, remains vacated for immigration purposes). In *Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003), it was reiterated that if a court vacates a conviction for reasons unrelated to a procedural or substantive defect in the underlying criminal proceedings, the alien remains "convicted" for immigration purposes.

The documents submitted in response to the notice of August 9, 2012, do not support a finding that the convictions had been vacated for underlying procedural or constitutional defect having to do with the merits of the case. As a result, the applicant remains convicted, for immigration purposes, of the misdemeanor offenses and is, therefore, ineligible for TPS. 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 deny the application for this reason 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 is dismissed.