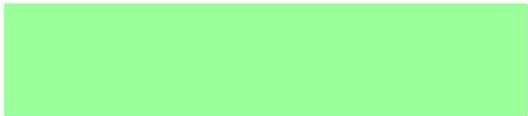




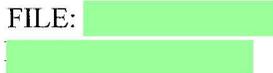
U.S. Citizenship
and Immigration
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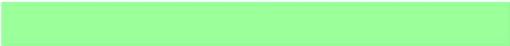
(b)(6)



DATE: **AUG 09 2013**

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,



Ron Rosenberg
Acting 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 dismissed.

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.

On June 2, 2011, the director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States. However, the notice was sent to the applicant's old address. The record reflects that the applicant had provided a new address which was received at the Vermont Service Center on March 1, 2011. On December 3, 2012, the notice was re-mailed to the applicant's current address of record. Accordingly, the appeal will be considered as timely filed.

On appeal, the applicant asserts that "all of the charges that I was accused for and arrested were dropped or dismissed. I was not guilty or in court legal terms the decision was 'nolle prosequi.'" The applicant states that he only has traffic fines that have been paid (\$50 fine for an expired registration, \$50 fine for expired inspection and a \$200 fine for license suspension). The applicant requests that his TPS be reinstated as he was "wrongly or incorrectly accused."

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).

"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.

Section 101(a)(48)(B) of the Act provides, "any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part."

The current Federal Bureau of Investigation report reflects the applicant's criminal history in Washington, D.C. and in the state of Virginia as follows:

1. On [REDACTED] the applicant was arrested by the Police Department of Washington, D.C. for prostitution (sexual solicitation). A *nolle prosequi* was entered on [REDACTED]
2. On [REDACTED], the applicant was arrested by the Police Department of Manassas Park, Virginia for driving with suspended or revoked license.
3. On [REDACTED] the applicant was arrested by the Prince William County Police Department of Virginia for two counts of contempt of court. A *nolle prosequi* was entered on [REDACTED]
4. On [REDACTED] the applicant was arrested by the Prince William County Police Department of Virginia for failure to appear on a misdemeanor case.
5. On [REDACTED] the applicant was arrested by the Fairfax County Police of Virginia for credit card fraud –conspire w/person, credit card forgery and credit card larceny. On [REDACTED] the applicant was convicted of fraudulent use of credit card and was sentenced to serve 16 months in jail which was suspended. The applicant was placed on supervised probation. A *nolle prosequi* was entered on [REDACTED] for the remaining offenses.

On [REDACTED], the applicant was requested to submit certified judgment and conviction documents for all arrests. The applicant, in response, submitted final dispositions from the General District Court Online Information System for Prince William County, which indicated:

- On [REDACTED], the applicant was found guilty in absentia of driving while license is suspended or revoked, a violation of Virginia Code section 46.2-301, a Class 2 misdemeanor. The applicant was ordered to pay a fine (\$200) and court cost (\$92) and his driving privileges were suspended for 90 days. [REDACTED]
- On [REDACTED] the applicant was charged with driving while license is suspended or revoked, a violation of Virginia Code section 46.2-301, a Class 1 misdemeanor. On [REDACTED] the applicant was found guilty of this offense and was sentenced to serve twelve months in jail (six months were suspended), ordered to pay a fine (\$100) and court cost (\$227) and his driving privileges were suspended for 90 days. [REDACTED]

- A *nolle prosequi* was entered on [REDACTED], the charge of failure to appear. [REDACTED]

The applicant also submitted a court document from the Fairfax County Circuit Court, which listed the balance due for [REDACTED]

The General District Court Online Information System for Fairfax County, Virginia¹ reflects the following:

- On [REDACTED], the applicant was charged with no driver's license, a violation of Virginia Code section 46.2-300, a Class 2 misdemeanor. On [REDACTED] the applicant was found guilty of this offense and was ordered to pay a fine (\$1000) and court cost (\$11). [REDACTED]
- On [REDACTED], the applicant was charged with reckless driving, a violation of Virginia Code section 46.2-862, a Class 1 misdemeanor. On [REDACTED] the applicant was found guilty of this offense and was ordered to pay a fine (\$2500) and court cost (\$82) and his license was suspended for six months. Case [REDACTED]
- On [REDACTED] the applicant was charged with driving under revocation/suspension, a violation of Virginia Code section 46.2-301, a Class 1 misdemeanor. On [REDACTED] the applicant was found guilty of this offense and was sentenced to serve 180 days in jail (170 days were suspended), ordered to pay a fine (\$100) and court cost (\$214) and his license was suspended for 90 days. [REDACTED]

The General District Court Online Information System for Fairfax County, Virginia also contains the following dispositions:

- On [REDACTED] the applicant was charged with driving under revocation/suspension, a violation of Virginia Code section 46.2-301, a misdemeanor. On [REDACTED] the applicant was found guilty of this offense and was sentenced to serve ten days in jail, which was suspended, ordered to pay a fine (\$100) and court cost (\$47) and his license was suspended for 90 days. [REDACTED]
- On [REDACTED] the applicant was charged with driving under revocation/suspension, a violation of Virginia Code section 46.2-301, a misdemeanor. On [REDACTED] the applicant was found guilty of this offense and was sentenced to serve 180 days in jail (170 days were suspended), ordered to pay court cost (\$92), his license was suspended for 90 days and he was placed on probation for one year. [REDACTED]

¹ Accessed August 1, 2013.

- On [REDACTED] the applicant was charged with credit card forgery. A *nolle prosequi* was entered on [REDACTED] for the charge of credit card forgery.
- On [REDACTED] the applicant was charged with obtain credit card – larceny. A *nolle prosequi* was entered on [REDACTED] for the charge of credit card larceny.
- On [REDACTED], the applicant was charged with credit card fraud - more than \$200, a violation of Virginia Code 18.2-195. [REDACTED] The final case disposition was handled in the Fairfax County Circuit Court.

On appeal, the applicant submits:

- Virginia Uniform Summons for a misdemeanor conviction of driving while license is suspended in [REDACTED] and for two infraction offenses (expired inspection and improper registration).
- A certified local criminal history check dated December 17, 2012, from the Fairfax County Police, which indicates: 1) a *nolle prosequi* was entered on [REDACTED] for the charges of credit card forgery and credit card theft; 2) no disposition for an arrest on [REDACTED] for unlawful name change; and 3) a guilty finding on February 6, 2009 for credit card fraud, a violation of Virginia Code section 18.2-195. The applicant was sentenced to serve 16 months in jail, which was suspended.
- Court documents in [REDACTED] and [REDACTED] indicating that a *nolle prosequi* had been entered on [REDACTED] for the charges of credit card forgery and credit card theft, respectively.

On appeal, the applicant states that all traffic fines have been paid. Mere compliance with a court order, however, neither alleviates the applicant of a conviction that has occurred nor dismisses the conviction.

Virginia law provides that the punishment for conviction of a Class 1 misdemeanor is confinement in jail for no more than twelve months and the punishment for conviction of a Class 2 misdemeanor is confinement in jail for no more than six months. Virginia Code section 18.2-11. As cited above in 8 C.F.R. § 244.1, for immigration purposes a misdemeanor is any offense that is punishable by imprisonment for a term of one year or less, *regardless of the term such alien actually served, if any.* (Emphasis added.) Therefore, the applicant's convictions for "driving while license is suspended or revoked," "no driver's license" and "reckless driving" are "misdemeanors" as defined for immigration purposes in 8 C.F.R. § 244.1.

On appeal, the applicant states that he will seek an expungement to clear his record.

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. See *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999). 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*, the Board of Immigration Appeals 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. See *Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003).

The applicant is ineligible for TPS due to his misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director’s decision to withdraw TPS on this ground will be affirmed.

As previously noted, the applicant has provided a criminal history check from the Fairfax County Police Department indicating that he was found guilty of credit card fraud. The applicant, however, was requested to submit certified judgment from the court. Further, it is not known whether the offense was handled as a felony or misdemeanor.

The applicant is, therefore, ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, TPS must be withdrawn on this ground as well.

TPS will be withdrawn for the above stated reasons, with each considered as an independent and alternative basis for withdrawal. 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.