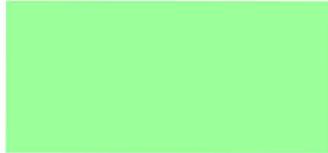


(b)(6)

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

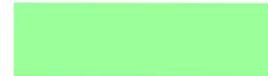


U.S. Citizenship
and Immigration
Services

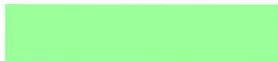


DATE: JUL 23 2013

Office: VERMONT SERVICE CENTER



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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

The director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States.

On appeal, the applicant asserts that he had one misdemeanor conviction as his conviction of breaking or removing vehicle parts had been vacated pursuant to California Penal Code section 1203.3.

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.

The Federal Bureau of Investigation report reflects the following offenses in the states of California and Texas:

1. On [REDACTED] the applicant was arrested by the Los Angeles Police Department for receiving known stolen property.
2. On [REDACTED] the applicant was arrested by the Long Beach Police Department for assault with a deadly weapon/no firearms/great bodily injury. The applicant was subsequently released due to lack of sufficient evidence.

3. On [REDACTED] the applicant was arrested by the Houston Police Department for driving while intoxicated
4. On [REDACTED] the applicant was arrested by the Houston Police Department for driving while intoxicated-2nd offense.

On April 6, 2012, the applicant was requested to provide certified judgment and conviction documents from the courts for all arrests. The applicant, in response, submitted:

- Certificate of Disposition from the Harris County District Clerk for Houston, Texas, which indicates that the applicant's offense of driving while intoxicated-2nd offense was dismissed on [REDACTED]
- Certificate of Disposition from the Harris County District Clerk for Houston, Texas, which indicates that on [REDACTED], the applicant pled guilty to driving while intoxicated – 1st offense, a Class B misdemeanor. The applicant was sentenced to serve ten days in the Harris County jail, ordered to pay court cost and his driver's license was suspended for one year. [REDACTED]
- Court documentation from the Los Angeles County Municipal Court (California), which indicates that on [REDACTED] the applicant was charged with breaking or removal vehicle parts and grand theft. On March 19, 1993, the applicant pled *nolo contendere* to violating section 10852 VC, breaking or removal vehicle parts, a misdemeanor. The applicant was placed on summary probation for 24 months and was sentenced to serve 30 days in the Los Angeles County jail. The remaining charge was dismissed. On April 30, 2008, the probation was terminated pursuant to section 1203.3 PC and the guilty plea was set aside, a not guilty plea was entered and the conviction was dismissed pursuant to section 1203.4 PC. [REDACTED]

The provisions of section 1203.4 PC allow a criminal defendant to withdraw a plea of guilty or *nolo contendere* and enter a plea of not guilty subsequent to a successful completion of some form of rehabilitation or probation. It does not function to dismiss a criminal conviction because of a procedural or constitutional defect in the underlying proceedings.

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).

In this case, there is no evidence in the record to suggest that the applicant’s conviction for breaking or removal vehicle parts was dismissed because of an underlying procedural or substantive defect in the merits of the case and, thus, the vacated conviction remains valid for immigration purposes.

The applicant is ineligible for TPS due to his two 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 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.