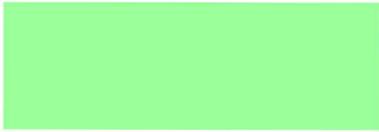


(b)(6)

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

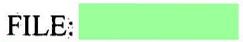
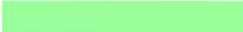


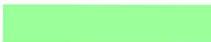
U.S. Citizenship
and Immigration
Services



DATE: NOV 07 2013

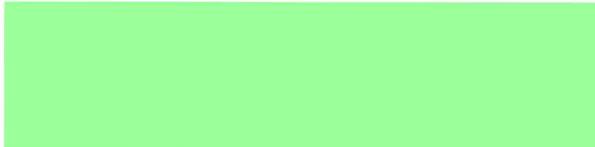
Office: VERMONT SERVICE CENTER

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:



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.

Thank you,


for Ron Rosenberg
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 El Salvador 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 two misdemeanors in the United States.

On appeal, counsel provides documentation from the court vacating one of the applicant's convictions.

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.

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 record contains court documentation in Case no. [REDACTED] from the [REDACTED] Municipal Court, [REDACTED] California, which indicates that on May 24, 1993, the applicant pled *nolo contendere* to and was convicted of violating sections 273a(2) PC, child endangerment, and 273.5(a), inflict corporal injury upon a spouse/cohabitant, both misdemeanors. The applicant was sentenced to serve 365 in jail, ordered to pay a fine and court cost, and was placed on probation for three years for violating section 273A(2) PC. Imposition of sentence was suspended and the applicant was placed on summary probation for three years for violating section 273.5(a) PC.

On December 16, 2010, a motion to vacate convictions was filed based upon ineffective assistance of counsel. On March 1, 2011, the prior convictions were dismissed in the furtherance of justice pursuant to section 1385 PC,¹ and the proceedings were subsequently continued. On March 15, 2011, neither the applicant nor his counsel was present in court and the court documentation indicates that the “judge declines to sign order plea vacated and withdrawn.”

Based on this finding, the director determined that the applicant remained convicted of the misdemeanors offenses and denied the application on October 24, 2012.

On appeal, counsel provides court documentation from the [REDACTED] Superior Court, [REDACTED] California, indicating that on March 1, 2011, the applicant had presented a motion to vacate his May 23, 1993 conviction “to a violation of California *Penal Code* section 273.5.” On December 7, 2012, the [REDACTED] Superior Court, ordered the applicant’s motion be granted and that his conviction “to a violation of California *Penal Code* section 273.5” be vacated for reasons set forth on the record on March 1, 2011.

Counsel has provided sufficient documentation from the court indicating that the conviction of section 273.5 PC has been vacated for underlying procedural or constitutional defect having to do with the merits of the case. Therefore, this conviction no longer affects immigration consequences. *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006).

No evidence from the court has been presented on appeal regarding the remaining conviction. Therefore, the conviction of child endangerment will stand. The applicant’s remaining misdemeanor conviction, however, 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.

¹ Section 1385(a) PC provides, in pertinent part, that a judge or magistrate may, either on his or her own motion or upon the application of the prosecuting attorney, and in the furtherance of justice, order an action to be dismissed.