



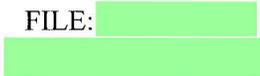
U.S. Citizenship
and Immigration
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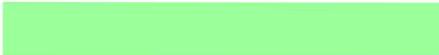
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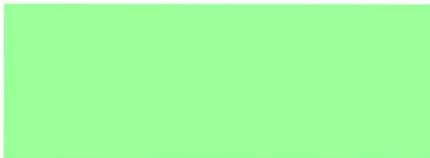
Office: VERMONT SERVICE CENTER

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. 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
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, Vermont Service Center. The applicant has appealed the denial of his re-registration application.¹ The matter is now before the Administrative Appeals Office (AAO). 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 April 15, 2014, the director denied the re-registration application because the applicant had been convicted of three misdemeanors in the United States.

On appeal, counsel asserts that the applicant remains eligible for TPS as he has filed applications for post-conviction relief on his prior misdemeanor charges, which are currently pending. Counsel provides a copy of each application as evidence. Counsel indicates at Part 3.1 on the appeal form that a brief and/or additional evidence would be submitted to the AAO within 30 days. Counsel subsequently submits court documentation, which vacates one of the misdemeanor 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 the following from the Iowa District Court for [REDACTED]:

¹ The applicant listed the receipt number of the current Form I-821 on the appeal form.

1. Court documentation in Case no. [REDACTED] which indicates that on November [REDACTED] the applicant pled guilty to theft in the fifth degree, a violation of Iowa Code section 714.2(5), a misdemeanor. The applicant was ordered to pay a fine and court costs.
2. Court documentation in Case no. [REDACTED], which indicates that on March [REDACTED] the applicant pled guilty to interference with official acts, a violation of Iowa Code section 719.1(1), a misdemeanor. The applicant was ordered to pay a fine.
3. Court documentation in Case no. [REDACTED] which indicate that on March [REDACTED] the applicant was arrested and subsequently charged with operating while intoxicated – first offense, a violation of Iowa Code section 321J.2, a misdemeanor. On January [REDACTED], judgment was deferred and the applicant was placed on probation for one year, ordered to pay court costs and attend a drinking driver's course.

Prior to filing the Form I-290B, Notice of Appeal or Motion, counsel submitted a letter dated April 18, 2014, indicating that Applications for Post-Conviction Relief had been filed before the Iowa District Court for [REDACTED] in cases [REDACTED] and [REDACTED]. Counsel requested that the matter be held in abeyance until a final ruling has been issued in each case.

On appeal, counsel submits a Motion to Reopen and Vacate the conviction of interference with official acts. The motion indicates that the applicant, at the time of his guilty plea, was not fully aware of the consequences of a guilty plea and therefore the plea was not made knowingly and willfully. On June [REDACTED], the motion to set aside judgment was granted. On June [REDACTED] the Motion to Dismiss the charge of interference with official acts and the case [REDACTED] were granted.

A conviction that has been vacated due to procedural or substantive defects in the underlying proceedings is no longer a valid conviction for immigration purposes. *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006). State rehabilitative actions that do not vacate a conviction on the merits are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999).

Counsel has provided sufficient documentation from the Iowa District Court for [REDACTED] indicating that the misdemeanor conviction of interference with official acts has been vacated for underlying procedural or constitutional defect having to do with the merits of the case. Therefore, the applicant no longer remains convicted of the cited misdemeanor offense.

The applicant, however, remains ineligible for TPS due to his remaining misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). We will not hold a proceeding in abeyance while an individual attempts to seek post-conviction relief. Accordingly, the director's decision to simultaneously deny the re-registration application and withdraw TPS because of the applicant's misdemeanor convictions will be affirmed.

(b)(6)

NON-PRECEDENT DECISION

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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.