



**U.S. Citizenship
and Immigration
Services**

(b)(6)

Date: **APR 29 2015** Office: VERMONT 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 (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

for

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, Vermont Service Center.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 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) in 2006 under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a. On August 29, 2013, USCIS notified the applicant it intended to deny his application for re-registration of TPS and withdraw his TPS based on ineligibility due to his failure to submit documentation of his criminal arrest record and disposition of charges. Accordingly, on January 23, 2014, the director withdrew TPS and denied re-registration of associated benefits because the applicant failed to submit any evidence that would overcome the grounds for withdrawal.

On appeal, the applicant asserts that USCIS erroneously interpreted the record in finding the applicant's criminal record warranted withdrawal of TPS. The applicant contends that as all his arrests were for misdemeanors which, with one exception, were dismissed or discharged without a conviction, there was no basis on which to deny re-registration or withdraw TPS.

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 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. Section 244(c)(2)(B)(i) of the Act. An alien is also ineligible for TPS if found to be inadmissible. See Section 244(c)(1)(A)(iii) of the Act. An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime, as well as if he is a controlled substance violator. Section 212(a)(2)(A)(i) of the Act.

The Notice of Intent to Deny TPS listed arrests in Texas and El Salvador and requested that the applicant submit court dispositions for these charges.¹ The three Texas arrests include one for Driving While Intoxicated (██████████, 1998), one for Terroristic Threats (██████████ 1999), and one for possession of a controlled substance (██████████ 2010). In addition, the Denial Decision states that the applicant was also arrested in Maryland for Resisting Arrest (██████████ 2004). The Director indicated that further documentation showing final disposition of these arrests was required, as was the applicant's signed statement describing the date, place, charge, and outcome of any arrest outside the United States.

¹ Government record list charges for attempted robbery in 2008 in El Salvador under a name used by the applicant when he entered the United States without inspection in 1997 and was subsequently removed. It is not clear whether this arrest record relates to the applicant, and he asserts that he was not in El Salvador in 2008 and the record is based on mistaken identity.

In statements dated February 14, 2014 and April 2, 2014, the applicant acknowledges his arrests but claims on appeal that they were all for misdemeanors and all but one were dismissed.

The record indicates that on [REDACTED] 2010, the applicant was arrested for felony possession of a controlled substance in [REDACTED], Texas. On [REDACTED] 2012, the applicant pled guilty to the felony offense of attempted possession of a controlled substance (cocaine) in violation of Texas Penal Code § 481.134(d). Adjudication of guilt was deferred and he was placed on probation and community supervision for two years and ordered to pay a fine and court costs. On October 16, 2013, the court found that he had met the conditions of his community supervision and discharged him from community supervision and dismissed the proceedings against him.

Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines “conviction” for immigration purposes as:

A formal judgment of guilt of the alien entered by a court or, if 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.

As the applicant resides in Texas, this matter falls under the jurisdiction of the United States Court of Appeals for the Fifth Circuit, where the controlling precedent decision is *Moosa v. I.N.S.*, 171 F.3d 994, 1006-10 (5th Cir. 1999). The court in *Moosa* held that the alien's 1990 guilty plea under the Texas deferred adjudication statute is a conviction for immigration purposes under section 101(a)(48)(A) of the Act, where the alien pled guilty, and the court imposed punishment and a restraint on liberty in the form of time served in jail on work release and the requirements that he report to a probation officer and attend counseling. 171 F.3d at 1005-1006. *See also Matter of Punu*, 22 I&N Dec. 224 (BIA 1998) (holding that a 1993 Texas deferred adjudication meets the definition of conviction under section 101(a)(48)(A) of the Act).

Under the current statutory definition of “conviction” provided 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 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*, 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. 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. *Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003).

In the present matter the applicant pled guilty to felony attempted possession of a controlled substance and was placed on probation and ordered to pay a fine and court costs. The record further indicates that the dismissal of the proceedings against him was by operation of a state rehabilitative statute and was not related to a procedural or substantive defect in the underlying criminal proceedings. His deferred adjudication therefore constitutes a conviction as he entered a plea of guilty to the charge and the judge ordered a punishment and restraint on his liberty in the form of probation and fines.

The applicant is ineligible for TPS pursuant to section 244(c)(2)(B)(i) of the Act because he has one felony conviction and because he is inadmissible under section 212(a)(2)(A)(i)(II) of the Act for his controlled substance violation. After considering the entire record, including the applicant's statements on appeal, the director's decision to withdraw TPS and deny re-registration will therefore be affirmed.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.