



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **AUG 18 2015**

FILE #: [Redacted]

APPLICATION RECEIPT #: [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:

[Redacted]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the application. The matter is now before the Administrative Appeals Office on appeal. The matter will be remanded for further action consistent with this decision.

The applicant is a native and citizen of Haiti who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a. On October 7, 2014, the director denied the application for re-registration because the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel submits court documents indicating that one of the applicant's misdemeanor convictions has been vacated. Counsel also submits copies of the applicant's petition for post-conviction relief and the court's order of dismissal entered on [REDACTED]

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. 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 record reflects that on [REDACTED] the applicant was arrested by the [REDACTED] County Sheriff's Office for reckless driving and evading arrest (motor vehicle). On [REDACTED] in the General Sessions Court of [REDACTED] Tennessee, the applicant pled guilty to violating TCA § 55-10-205, reckless driving, and TCA § 39-16-603, evading arrest (motor vehicle). The applicant was sentenced to time served and was placed on supervised probation.

However, the order of dismissal entered on [REDACTED] from the General Sessions Court of [REDACTED] Tennessee, indicates that the misdemeanor conviction for evading arrest has been withdrawn and dismissed. The order further indicates that "after review of the [the applicant's] plea on record, [the applicant] says he is not guilty twice" and that it was clear the applicant did not understand his plea or its consequences.

Under the statutory definition of “conviction,” no effect is to be given in immigration proceedings to a state action that 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. *See also, Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003) (holding that in light of the language and legislative purpose of the definition of a “conviction” at section 101(a)(48) of the Act, “there is a significant distinction between convictions vacated on the basis of a procedural or substantive defect in the underlying proceedings and those vacated because of post-conviction events, such as rehabilitation or immigration hardships); and *Matter of Rodriguez-Ruiz*, 22 I&N Dec. 1378, 1379 (BIA 2000) (a conviction vacated under a state criminal procedural statute, rather than a rehabilitative provision, remains vacated for immigration purposes.)

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. *See Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006) (holding that a conviction vacated for failure of the trial court to advise the alien defendant of the possible immigration consequences of a guilty plea is no longer a valid conviction for immigration purposes).

Counsel has provided certified documentation from the sentencing court indicating that the evading arrest conviction has been vacated for underlying procedural or constitutional defect having to do with the merits of the case. Accordingly, the applicant’s evading arrest conviction no longer constitutes a conviction for immigration purposes.

The applicant’s one remaining misdemeanor conviction for reckless driving 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). Therefore, the director’s decision to deny the application for re-registration will be withdrawn

The record, however, reflects that the validity period of the applicant’s fingerprint check has expired. Therefore, the matter will be remanded for the purpose of sending the applicant a fingerprint notification form, and affording her the opportunity to comply with its requirements. Should the decision be adverse, the director must give written notice setting forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i).

ORDER: The director’s decision is withdrawn. The matter is remanded for further action consistent with the above and entry of a new decision.