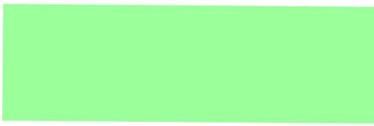




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: OFFICE: VERMONT SERVICE CENTER  
MAR 16 2015

FILE:

IN RE: APPLICANT:

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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1254. The record reveals that the applicant filed a TPS application during the initial registration period, which had been approved, and subsequently re-registered for TPS on May 2, 2013.

The director withdrew TPS and denied the re-registration application on September 18, 2013, because the applicant has been convicted of two or more misdemeanors.

On appeal, the applicant does not dispute his convictions.<sup>1</sup> He asserts, however, that because the convictions have been vacated, he is eligible for TPS. The applicant submits court documents reflecting dismissal or modification of his original sentences for misdemeanor crimes with his appeal.

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). The director may withdraw the status of an alien granted Temporary Protected Status 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).

“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.

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<sup>1</sup> The record includes a March 27, 2014 letter from an attorney, sent with additional criminal records after the applicant filed the instant appeal. As the record does not include a Form G-28, Notice of Entry of Appearance of Attorney or Accredited Representative, however, the applicant is considered “self-represented.”

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 applicant submits an Order of Dismissal, dated [REDACTED], 2014, from the Superior Court of California, [REDACTED] ordering that the plea, verdict, or finding of guilt regarding the applicant’s misdemeanor conviction for driving while under the influence (DUI), violating California Vehicle Code section 23152(b) on [REDACTED], 2010, be set aside and vacated, a plea of not guilty be entered, and the complaint be dismissed.

The record also includes a Petition for Modification or Change of Terms of Probation and Petition and Order under sections 1203.4, 1203.4a and 17 of the California Penal Code, filed on [REDACTED] 2013, at the Superior Court of California, [REDACTED]. The petition indicates that the applicant was convicted of a misdemeanor, driving while under the influence, under section 23152(b) of the California Vehicle Code on [REDACTED] 1985; he was placed on probation, which expired on [REDACTED], 1985; and the applicant successfully completed probation.

The record includes another Petition for Modification or Change of Terms of Probation and Petition and Order under sections 1203.4, 1203.4a and 17 of the California Penal Code, filed on [REDACTED] 2013, at the Superior Court of California, [REDACTED] referencing the applicant’s misdemeanor DUI conviction under Section 23152(a) of the California Vehicle Code with One Prior on [REDACTED] 1989. The petition indicates that the applicant was placed on probation, which expired on [REDACTED] 1992; and he successfully completed probation.

The applicant submits a third Petition for Modification or Change of Terms of Probation and Petition and Order under Section 1203.4, 1203.4a and 17 of the California Penal Code, filed on [REDACTED] 2013, at the Superior Court of California, [REDACTED] regarding a third DUI misdemeanor conviction under Section 23152(b) of the California Vehicle Code on [REDACTED], 1996. According to the petition, the applicant was placed on probation, which expired on [REDACTED] 1996; and the applicant successfully completed probation.

The record includes a fourth Petition for Modification or Change of Terms of Probation and Petition and Order under Section 1203.4, 1203.4a and 17 of the California Penal Code, filed on [REDACTED] 2013, at the Superior Court of California, [REDACTED] referencing the applicant’s conviction for Reckless Driving, a misdemeanor offense under Section 23103A of the California Vehicle Code, on [REDACTED] 1996. The petition indicates that the applicant was placed on probation; the probation expired on [REDACTED] 1996; and the applicant successfully completed probation.

Section 244(c)(2)(B)(i) of the Act provides that an alien shall not be eligible for temporary protected if the Attorney General finds that the alien has been convicted of any felony or two or

more misdemeanors committed in the United States. The applicant asserts that the evidence he provides on appeal shows that he no longer is convicted of two or more misdemeanors.

Under the current statutory definition of “conviction” as set forth in 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, does not expunge a conviction for immigration purposes. *See id.* at 523, 528; *see also Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003) (if a conviction is vacated for reasons unrelated to a procedural or substantive defect in the underlying criminal proceedings, the alien remains “convicted” for immigration purposes).

The court records for each of the applicant’s convictions do not indicate that the dismissals were on the merits or for a violation of constitutional or statutory rights in the underlying criminal proceedings. In each of the cases for which the applicant provides petitions for modification, the courts ordered that the plea, verdict, or finding of guilt be set aside and vacated, and a plea of not guilty be entered and the complaint be dismissed, based on the applicant’s successfully completing his probation. With respect to the [REDACTED] 2014, dismissal order regarding the applicant’s 2010 conviction, the applicant provides no evidence to establish that the dismissal was on the merits or for a violation of constitutional or statutory rights in the underlying criminal proceedings.

There is no indication in the evidence of record, including the court records provided, that any of the cases were dismissed on the merits or for a violation of constitutional or statutory rights in the underlying criminal proceedings. The cases were dismissed pursuant to a state rehabilitative statute after the applicant successfully completed probation. For immigration purposes the applicant was and remains convicted of each of these misdemeanor offenses under section 101(a)(48) of the Act.

Therefore, the applicant is ineligible for TPS because he has two or more misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). There is no waiver available, even for humanitarian reasons, of the requirements stated above. Therefore, the director’s decision to deny the application for this reason 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.