

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: MAY 28 2015

[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.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a citizen of El Salvador who is applying for 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 was approved. The applicant subsequently filed a re-registration application that led to the director's decision to withdraw TPS on March 27, 2014. The director determined that the applicant had failed to submit requested evidence, specifically, a court disposition record concerning the applicant's arrest on November 20, 2006, and documentation sufficient to establish his continuous physical presence in the United States between August 9, 2003 and August 30, 2006.

On appeal the applicant, through counsel, asserts that he is eligible for TPS, as the arrest on November 20, 2006 resulted in a "no bill," and he has provided sufficient documentation to establish his continuous physical presence in the United States. The applicant also submits a brief and additional evidence.

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).

We have reviewed all of the evidence and have made a *de novo* decision based on the record and our assessment of the credibility, relevance and probative value of the evidence.¹

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).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception when the offense is defined by the state as a misdemeanor and the sentence actually imposed is one year or less, regardless of the term actually served. Under this exception, for purposes of section 244 of the Act, the crime shall be treated as 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

¹The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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.

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) (reiterating that 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 record reflects that on November 20, 2006, the applicant was arrested by the [REDACTED] Police Department, [REDACTED] Texas, for abandoning or endangering a child with intent to return, a felony.

On July 19, 2013, the director issued a notice requesting the applicant to submit certified judgment and conviction documents for all arrests. In response the applicant submitted documents from City of [REDACTED] Municipal Courts Department, concerning the dismissal of charges related to speeding and other motor vehicle offenses. He also submitted documents issued by the [REDACTED] District Court pertaining to his November 20, 2006 arrest, including a certificate of disposition, dated July 29, 2013, from the [REDACTED] District Clerk, stating that on February 14, 2007, his offense was “no billed by grand jury.”

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application. The director noted that the certificate of disposition does not include the applicant’s plea to the charge.

On appeal, the applicant, through counsel, asserts that he did not submit a plea for the charge, because the matter was no billed by the grand jury. Therefore, the applicant is not ineligible for TPS due to a criminal conviction.

The final court disposition record the applicant submitted on appeal reflects that on February 14, 2007, the matter was “no billed” by the grand jury. The applicant, therefore, does not have a felony conviction, and he is not ineligible for TPS because of a criminal conviction under section 244(c)(2)(B)(i) of the Act. The director’s decision concerning the applicant’s ineligibility for TPS because of his criminal conviction is withdrawn.

The next issue in this proceeding is whether the applicant has established his continuous physical presence in the United States between August 9, 2003 and August 30, 2006.

The record includes:

- 1) Two paystubs, dated November 1, 2003 and December 13, 2003.
- 2) A dental-services statement, dated December 17, 2003.
- 3) Unsigned income tax returns for the years 2003, 2004, 2005, and 2006. The 2003 tax return is date-stamped February 26, 2004, and the remaining tax returns are dated August 9, 2013.
- 4) An affidavit from the applicant's brother-in-law, attesting that the applicant came to the United States in 2000 and has since resided here. [REDACTED] also attests that when the applicant came to the United States the applicant resided with his family for about two years, then the applicant moved to [REDACTED] where he worked for about a year, and returned to [REDACTED]
- 5) An affidavit from [REDACTED] attesting to having met the applicant through her husband in 2002. [REDACTED] states that in 2002, the applicant began mowing their lawn every two weeks; that in 2003 he left [REDACTED] and moved to [REDACTED] for an employment opportunity; and he returned in 2004 and continued to do their landscaping work until sometime in 2008, when the applicant began working as a truck driver.
- 6) An affidavit from [REDACTED] attesting to having known the applicant since 2001. [REDACTED] also states that the applicant worked in yard maintenance and that the applicant has lived in [REDACTED] in [REDACTED] in 2003 for 6 months; and in North Carolina for about six months before he returned to [REDACTED] in 2004. He further states that since 2005, he and the applicant have worked together as truck drivers.
- 7) An affidavit from [REDACTED] attesting to having known the applicant to have resided in the United States since 2001. [REDACTED] states since 2005, that he and the applicant have worked together; that he helped the applicant get a job as a truck driver; and that the applicant has never left the United States. He states that the applicant resided with his family for about two years, and then moved to [REDACTED] where he worked for about a year, before returning to [REDACTED]
- 8) A notarized statement from [REDACTED] stating that from 2003 through 2006 the applicant provided lawn care services at her residence in [REDACTED] Texas. She states that in 2003 the applicant went to [REDACTED] returned to [REDACTED] in 2004, and continued to perform lawn care services until 2006.
- 9) A notarized statement from [REDACTED] stating that in 2004, 2005, and 2006, the applicant provided lawn care services at his residence in [REDACTED]
- 10) A notarized statement from [REDACTED] stating that in 2004, 2005, and 2006, the applicant provided lawn care services at his residence in [REDACTED]

Cumulatively the evidence the applicant has provided, including affidavits and notarized statements, establishes his continuous physical presence in the United States between August 9, 2003 and August 30, 2006. Accordingly, the director's decision to withdraw TPS for this reason is withdrawn.

(b)(6)



NON-PRECEDENT DECISION

Page 5

As the record establishes the applicant's eligibility for TPS, the application is approved.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act 8 U.S.C. § 1361. The applicant has sustained his burden.

ORDER: The appeal is sustained. The application is approved.