



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF V-S-V-

DATE: DEC. 2, 2015

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

APPLICATION: FORM I-821, APPLICATION FOR TEMPORARY PROTECTED STATUS

The Applicant, a native and citizen of El Salvador, seeks review of the decision withdrawing the Applicant's temporary protected status (TPS). *See* Section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a. The Acting Director, Vermont Service Center, withdrew the Applicant's TPS and denied the application for re-registration. A subsequent appeal was dismissed by our office. The matter is now before us on a motion to reconsider. The motion to reconsider will be granted and the appeal will be sustained.

On February 26, 2014, the Director withdrew TPS and denied the application for re-registration because the Applicant did not submit requested court documentation relating to his arrests on [REDACTED], 2004, by the sheriff's office in [REDACTED] for assault causing bodily injury upon family member; [REDACTED], 2012, by the [REDACTED] Police Department for a liquor violation; and [REDACTED], 2012, by the [REDACTED] Police Department of Texas for assault causing bodily injury upon family member and unlawful restraint. In dismissing the appeal on September 19, 2014, we concurred with the Director's finding. We determined that the evidence submitted on appeal was not sufficient to establish that the offenses stemming from the Applicant's arrests on [REDACTED] and [REDACTED],¹ and [REDACTED], 2012, resulted in dismissals.

"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. 8 C.F.R. § 244.1. 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. *Id.*

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.

¹ In our decision of September 19, 2014, we inadvertently listed the year of arrest as 2010.

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A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion, the Applicant submits certified documents from the Clerk's Office for [REDACTED], Texas, which indicate that the charges of assault causing bodily injury upon family member from the Applicant's arrests on [REDACTED], 2004, were dismissed on [REDACTED], 2005. We find that this evidence submitted is sufficient to establish that no convictions occurred from these violations.

Regarding the arrest on [REDACTED], 2012, the Applicant resubmits the motion to dismiss and the order dated [REDACTED], 2013, dismissing a court case in [REDACTED], Texas. The Applicant also submits from the justice of the peace, precinct #3 for [REDACTED], Texas, a magistrate's warning indicating that on [REDACTED], 2012, the Applicant was charged with an offense of unlawful restraint.

However, as none of these documents contained sufficient identifying information, such as an arrest date and case number, the magistrate's warning, the motion to dismiss, and the order of [REDACTED], 2013, could not be determined to relate to the Applicant's [REDACTED], 2012, arrest.

In a notice of intent to deny the motion dated [REDACTED], 2015, we afforded the Applicant an opportunity to submit certified documentation from either the court or the County Attorney's Office of [REDACTED], Texas with a detailed narrative of the final disposition relating to the arrest on [REDACTED], 2012, for assault causing bodily injury upon family member and unlawful restraint.

In response, the Applicant submitted letters dated [REDACTED], 2015, from the Office of County Attorney for [REDACTED], Texas, indicating that the Applicant was not prosecuted and no formal charges will be filed for his arrest on [REDACTED], 2012, for assault causing bodily injury and unlawful restraint.

As stated in our decision of September 19, 2014, the Applicant provided court documentation reflecting a public intoxication conviction on [REDACTED], 2012. Public Intoxication is defined under Texas law as a Class C misdemeanor. Texas Penal Code § 49.02(c). Class C misdemeanors are only punishable by fines not to exceed \$500.00. Texas Penal Code § 12.23. Accordingly, the Applicant's conviction for public intoxication is not considered a misdemeanor as defined for immigration purposes in 8 C.F.R. § 244.1.

The Applicant has overcome the deficiencies outlined in the decisions of the Director and our decision on appeal. The present record indicates the Applicant has no convictions for immigration purposes, and there are no other known grounds of ineligibility or inadmissibility under the provisions of section 244(c) of the Act and the related regulations in 8 C.F.R. §§ 244.3(c) and 244.4(a). Therefore, the Director's decision of February 26, 2014, and our decision of September 19, 2014, will be withdrawn and, accordingly, the Applicant's TPS will be reinstated.

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 been met.

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ORDER: The motion to reconsider is granted and the appeal is sustained.

Cite as *Matter of V-S-V-*, ID# 11970 (AAO Dec. 2, 2015)