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

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

MATTER OF S-E-M-

DATE: NOV. 20. 2015

APPEAL OF VERMONT SERVICE CENTER 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* Immigration and Nationality Act (the Act) § 244, 8 U.S.C. § 1254(a). The Director, Vermont Service Center, withdrew the Applicant's TPS and denied the application for re-registration. The matter is now before us on appeal. The appeal will be dismissed.

On April 1, 2014, the Director withdrew the Applicant's TPS and denied the application for re-registration because the Applicant did not submit requested court documentation relating to her criminal record.

On appeal, the Applicant asserts that she has only one misdemeanor conviction. The Applicant contends that no charges were filed relating to her arrest for theft on [REDACTED] 1997, and that her arrest for unpaid tickets in 1999 were based on traffic violations which carry no jail term under Texas law.

The Director may withdraw the status of an applicant granted TPS under section 244 of the Act at any time if it is determined that the applicant 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 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

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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.

In a statement submitted with her TPS application, the Applicant admitted that in 1992, she was arrested for shoplifting in [REDACTED], Texas, served two days in jail, and placed on probation. The Applicant further admitted that in 1999 she was arrested for unpaid tickets in [REDACTED] Texas and was released after spending three days in jail.

In a notice of intent to deny dated December 2, 2013, the Applicant was asked to provide certified judgment and conviction documents from the courts for all arrests, including an arrest on [REDACTED] 1997, by the [REDACTED] Police Department for theft of property valued greater than or equal to \$50 but less than \$500. The Applicant was advised that a criminal history check revealed that she had been convicted of this theft offense and was sentenced to ten days in jail, a fine and court costs.

The evidence of record contains the following:

- Certified court documentation from the District Court for [REDACTED], Texas, which indicates that on [REDACTED] 1992, the Applicant pled guilty to theft \$200-\$750, a violation of Texas Penal Code § 31.03, a misdemeanor. Adjudication of guilt was deferred, the Applicant was ordered to pay a fine, and she was placed on probation for one year.
- Certified court documentation from the County Clerk for [REDACTED] Texas, which indicates that a search of the Applicant's name, [REDACTED] was conducted and there was no case filed for an arrest on [REDACTED] 1997, for theft of property greater than or equal to \$50 and less than \$500.
- Printouts of charges filed on [REDACTED] 1999, for operating a vehicle without liability insurance, a violation of Texas Transportation Code § 601.191, and no driver's license (when unlicensed), a violation of Texas Transportation Code § 521.025. The Applicant pled *nolo contendere* to each charge, she was found guilty of each charge, and was ordered to pay a fine and court costs for each violation. The record reflects the Applicant spent 3 days in jail, for which she was given jail credit amounts of \$334 and \$150.
- A printout of a charge filed on [REDACTED], 2012, for speeding (exceed prima facie limit), a violation of Texas Transportation Code § 545.352(a). The Applicant pled guilty to the offense and was ordered to pay a fine and court costs.

A violation under Texas Transportation Code § 601.191 is a misdemeanor punishable by a fine of not less than \$175 or more than \$350. *See* Texas Transportation Code § 601.191. A first violation under Texas Transportation Code § 521.025 is a misdemeanor punishable by a fine not to exceed \$200. *See* Texas Transportation Code § 521.025(c). The Applicant's speeding offense constitutes a misdemeanor pursuant to Texas Transportation Code § 542.301(b), and is punishable by a fine not to exceed \$200. *See* Texas Transportation Code § 542.401. As the punishments for violating Texas

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Transportation Code §§ 601.191 and 545.352(a), and a first offense of Texas Transportation Code § 521.025 are only punishable by fine, and not by imprisonment, the convictions are not considered misdemeanors for immigration purposes.

The Applicant's theft conviction of [REDACTED] 1992, is a misdemeanor punishable by imprisonment over five days and, therefore, qualifies as a misdemeanor for immigration purposes. Further, the document from [REDACTED] for [REDACTED], Texas is not sufficient to overcome the evidence of a theft arrest on [REDACTED] 1997, as it only attests to the search under the Applicant's true name. However, the criminal history check indicates that the Applicant was arrested under the name [REDACTED]

In a notice of intent to dismiss the appeal dated August 6, 2015, the Applicant was granted thirty (30) days to submit certified documentation from either the court or the state attorney's office for the arrest under the name [REDACTED] 1997. The Applicant, however, did not respond to our notice.

The Applicant remains ineligible for TPS because she did not provide information necessary for the adjudication of her application. 8 C.F.R. § 244.9(a). Consequently, the Director's decision to withdraw TPS and deny the application for re-registration on this ground will 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.

Cite as *Matter of S-E-M-*, ID# 11683 (AAO Nov. 20, 2015)