



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

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

MATTER OF P-S-

DATE: SEPT. 10, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Applicant, a native and citizen of Haiti, was granted temporary protected status. *See* Immigration and Nationality Act (the Act), §244, 8 U.S.C. § 1254a. The Director, California Service Center, withdrew temporary protected status and denied the application for re-registration. The matter is now before us on appeal. The appeal will be dismissed.

On September 17, 2014, the Director withdrew the Applicant's temporary protected status (TPS) and denied the application for re-registration because the Applicant had been convicted of a felony in the United States.

On appeal, the Applicant asserts that he did not commit a felony offense. The Applicant states that he only spent four hours in jail, acted in self-defense, and that the individual he had the altercation with lied to the police.

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 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).

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 8 C.F.R. § 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 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.

(b)(6)

Matter of P-S-

The record reflects that on [REDACTED] 2013, the Applicant was arrested by the [REDACTED] Florida for aggravated battery. On [REDACTED] 2013, in the Circuit Court of the Ninth Judicial Circuit, [REDACTED] Florida, the Applicant pled *nolo contendere* to a lesser included offense of felony battery, a violation of Florida Statute 784.01(1)(B), a felony of the third degree. Adjudication of guilt was withheld and the Applicant was sentenced to one day in jail, ordered to complete 50 hours of community service, pay a fine and court costs, and was placed on supervised probation for two years.

The fact that the Applicant was only sentenced to one day in the county jail is not relevant to the question of whether the offense qualifies as a "felony" for immigration purposes. As noted, a felony under the regulations is a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term served. Therefore, a felony is defined under the regulation by the maximum imprisonment possible for the crime under Florida law, not the specific prison term meted out by the judge in a particular case. Florida law provides that a person convicted of a felony of the second degree is punishable by imprisonment not exceeding five years. *See* Florida statute 775.082(4)(d). Accordingly, the offense of felony battery qualifies as a felony as defined for immigration purposes in 8 C.F.R. § 244.1.

The Applicant's statements on appeal have been considered. However, this is not the proper forum to determine constitutional issues involving convictions, as these issues are within the jurisdiction of the judicial court. We may only look to the judicial records to determine whether the person has been convicted of the crime and not behind the conviction to reach an independent determination concerning guilt or innocence. *Pablo v. INS*, 72 F.3d 110, 113 (9th Cir. 1995); *Gouveia v. INS*, 980 F.2d 814, 817 (1st Cir. 1992); and *Matter of Roberts*, 20 I&N Dec. 294 (BIA 1991).

The Applicant entered a plea of *nolo contendere* to the offense of felony battery and the judge ordered some form of punishment, penalty and restraint on the applicant's liberty. Accordingly, for immigration purposes, the Applicant has been convicted of the felony offense within the meaning of section 101(a)(48)(A) of the Act.

The applicant is ineligible for TPS due to his felony conviction. 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. Consequently, the Director's decision to withdraw TPS and deny the application for re-registration will be affirmed.

ORDER: The appeal is dismissed.

Cite as *Matter of P-S-*, ID# 13831 (AAO Sept. 10, 2015)