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

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

MATTER OF O-G-

DATE: SEPT. 10, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

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

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

On March 31, 2014, the Acting Director withdrew the Applicant's TPS and denied the application for re-registration because it was determined that the documents presented in response to the notices of intent to deny did not establish that the Applicant and [REDACTED] were not the same person and the Applicant had failed to establish that the drug arrest on [REDACTED] and incarceration on [REDACTED], did not relate to him.

The Director may withdraw the status of an alien 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. *See* 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. 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.

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We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The record contains a Federal Bureau of Investigation (FBI) report under the name [REDACTED] which indicates that an arrest occurred on or about [REDACTED] 1992 by the [REDACTED] of Florida for possession of marijuana. The FBI report indicates that on or about [REDACTED] 1993, [REDACTED] was incarcerated at the [REDACTED] for a conviction of trafficking in cocaine.

Based on the foregoing, the Acting Director, on September 16, 2013 and December 11, 2013, requested that the Applicant submit certified judgment and conviction documents from the court for the possession of marijuana and trafficking in cocaine violations. The Applicant was advised that the court documents must include an explanation for each drug offense.

In response, the Applicant asserted that he had never been arrested or convicted of a drug charge and that the finding of the FBI report is in error. The Applicant also asserts that a request for a photograph of [REDACTED] had been made to the [REDACTED] that the description (height) of [REDACTED] differs from him, and that he cannot put forth an explanation as the drug offenses do not relate to him. The Applicant further contends that he was not in the state of Florida at the time of the 1992 charge, as he was residing in the New York. The Applicant also asserted that he has never used the alias [REDACTED] he has never been in the [REDACTED] and that based on the information obtained from a search of the [REDACTED] he had never resided at the addresses in [REDACTED] Florida or owned vehicles listed under the name [REDACTED]. The Applicant submitted the following:

- An arrest report and several court dispositions under the name [REDACTED] which related to 1993 convictions of trafficking in cocaine and no valid driver's license, a conviction of possession of marijuana in 1992, and misdemeanor and traffic infraction convictions in 1994 and 1996.
- Fingerprints of the Applicant taken by the [REDACTED] County Sheriff's Office on or about [REDACTED] 2014.
- A Request for Notarized Arrest Record Check from the [REDACTED] County Sheriff's Office of Florida, which indicated that a record check had been completed and no arrest record was found in the Applicant's name.

Although the fingerprints of [REDACTED] have been identified as belonging to the Applicant, a search of public databases has been conducted and it has been determined that the Applicant and [REDACTED] who has been convicted of drug charges in 1992 and 1993, are two distinct individuals, with different dates of birth, places of birth and physical characteristics.

Accordingly, the Acting Director's decision to withdraw TPS and denied the re-registration application on the above drug charges will be withdrawn.

However, a search of the public databases reveals that the Applicant has two misdemeanor convictions. Specifically, on [REDACTED], 1998, the Applicant was charged with violating Florida Statute 320.261,

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unlawfully attaching registration license plate not assigned, and Florida Statute 320.02, no vehicle registration, both misdemeanors of the second degree. On ██████████ 1999, the Applicant pled *nolo contendere* to both offenses. Adjudication of guilt was withheld and the Applicant was ordered to pay a fine and court costs.

In a notice of intent to dismiss the appeal dated July 2, 2015, the Applicant was advised that he remained ineligible for TPS based on his misdemeanor convictions. The Applicant was granted thirty (30) days to submit certified documentation from either the court or the state attorney's office to overcome our finding. The Applicant did not respond to our notice.

The Applicant remains ineligible for TPS due to his two misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the Acting Director's decision to deny the application for re-registration and withdraw TPS will not be disturbed.

The burden of proof in application proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is dismissed.

Cite as *Matter of O-G-*, ID# 11065 (AAO Sept. 10, 2015)