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

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

MATTER OF C-B-T-H

DATE: SEPT. 17, 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 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. A motion to reopen and reconsider, filed by the Applicant, was granted by the Director. The Director affirmed her previous decision. The matter is now before us on appeal. The appeal will be dismissed.

On January 15, 2015, the Director withdrew the Applicant's temporary protected status (TPS) because the Applicant had been convicted of two misdemeanors in the United States.

On appeal, the Applicant asserts that he has only one misdemeanor conviction. The Applicant contends that the town ordinance he was convicted of on [REDACTED] 2006, is not classified as a misdemeanor, as the charge would not have led to imprisonment. The Applicant resubmits the court dispositions relating to his criminal record.

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 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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The record contains the following:

- Court documentation from the Municipal Court of [REDACTED] New Jersey indicating that on [REDACTED] 2001, the Applicant was found guilty of improper behavior/disorderly conduct, a violation of NJS 2C:33-2A(1), a petty disorderly person offense. The applicant was ordered to pay a fine and costs.
- Certified court documentation from the [REDACTED] New Jersey, indicating that the Applicant had been charged with simple assault, a violation of NJS 2C:12-1A(1), which was dismissed on [REDACTED] 1996.<sup>1</sup>
- Certified court documentation from the [REDACTED] New Jersey, indicating that on [REDACTED] 2006, the Applicant pled guilty to violating Chapter 273, Article II, conduct in public. The applicant was ordered to pay a fine and court costs.

On appeal, the Applicant contends that his conviction on [REDACTED] 2006 is not a misdemeanor because the violation and penalty section of [REDACTED] New Jersey does not state any specific charge for each ordinance and rather sets a guideline for how to fine each chapter. The Applicant asserts that the inclusion of the words “and/or” in the penalty statute indicate that there is not one specific sentence for the ordinance violation.

Chapter 273, Article II, § 273-5 provides that a violation of this provision shall be punished by a fine and/or term of imprisonment as set forth in the violation and penalty section (§ 1-16) of the Code of the Town of West New York.

Article I, § 1-16, provides, in pertinent part, that any person, firm, or corporation violating any of the provisions contained in any chapter of the Code of the Town of [REDACTED] shall, upon conviction, be punished by a fine not to exceed \$1000 or imprisonment in the county jail for a period not to exceed 90 days, or by both such fine and imprisonment.

As indicated above, a misdemeanor for immigration purposes is any offense that is punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any. Offenses that are punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. In this case, New Jersey law provides that a violation of [REDACTED], New Jersey local ordinance may be punishable by up to 90 days imprisonment. Therefore, a conduct in public violation qualifies as a misdemeanor, as defined for immigration purposes in 8 C.F.R. § 244.1.

The submitted court dispositions reflect that the Applicant pled guilty to or was found guilty of each charge, improper behavior/disorderly conduct and conduct in public, and the judge ordered some

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<sup>1</sup> The Director, in her notice of intent to withdraw TPS, requested that the applicant provide the reason for the dismissal of the charge. However, there is no indication that the charge resulted in a conviction, as the charge was dismissed on [REDACTED] 1996.

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form of punishment or penalty for each charge above. Therefore the Applicant has been convicted of each offense within the meaning of section 101(a)(48)(A) of the Act.

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). There is no waiver available, even for humanitarian reasons, of the requirements stated above. Consequently, the Director's decision to withdraw TPS 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 C-B-T-H-*, ID# 14310 (AAO Sept. 17, 2015)