



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

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

MATTER OF W-P-

DATE: SEPT. 17, 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 (TPS) and denied the application for re-registration. The matter is now before us on appeal. The matter is remanded for further action consistent with this decision.

On February 24, 2015, the Director withdrew the Applicant's TPS and denied the application for re-registration because it was determined that the Applicant had been convicted of two misdemeanors in the United States.

On appeal, the Applicant asserts that he has one misdemeanor conviction, as the remaining charges were dismissed or considered a non-traffic infraction. The Applicant resubmits the court disposition and police report.

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.

(b)(6)

*Matter of W-P-*

The record contains an arresting report from the [REDACTED] Police Department indicating that the Applicant was arrested for obstruction by disguise, driving at night without headlights, and driving on an expired license for more than one year. In the County Court for [REDACTED] Florida, the Applicant was charged with unlawful use false name/identity, expired driver's license more than four months, and no lamps/illuminating devices. On [REDACTED] 2009, the Applicant *pled nolo contendere* to violating Florida Statute 322.03(5), driving while license has been expired for more than four months, and Florida Statute 901.36(1), unlawful use of false name/identity and adjudication of guilt was withheld. The Applicant was ordered to pay court costs for violating Florida Statute 901.36(1) and court costs were waived for the violating Florida Statute 322.03(5). The remaining charge, no lamps/illuminating devices, was dismissed.

As no court costs were imposed for violating Florida Statute 322.03(5), and the court did not ordered any other punishment, penalty, or restraint on the Applicant's liberty, the Applicant has not been convicted of this misdemeanor of the first degree offense within the meaning of section 101(a)(48)(A) of the Act.

Accordingly, the evidence of record indicates that the Applicant has one misdemeanor conviction, unlawful use of false name/identity, a first degree misdemeanor that does not render him ineligible for TPS under the provisions of section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a). Therefore, the Director's decision to withdraw the Applicant's TPS and denied the application for re-registration will be withdrawn.

The record, however, reflects that the validity period of the Applicant's fingerprint check has expired. Therefore, the matter will be remanded for the purpose of sending the Applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements. Should the decision be adverse, the Director must give written notice setting forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i).

**ORDER:** The matter is remanded to the Director, California Service Center, for further proceedings consistent with the foregoing opinion and for entry of a new decision.

Cite as *Matter of W-P-*, ID# 14218 (AAO Sept. 17, 2015)