



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

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

MATTER OF S-L-

DATE: SEPT. 24, 2015

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Applicant, a native and citizen of Haiti, 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, 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 March 10, 2015, the Director withdrew the Applicant's TPS and denied the application for re-registration because the Applicant had been convicted of two misdemeanors in the United States.

On appeal, the Applicant asserts that her violations did not result in any harm to anyone or property, that neither conviction resulted in her being jailed or incarceration, and that she was convicted of two infractions arising from a single scheme of conduct. The Applicant also submits a Memorandum issued by U.S. Citizenship and Immigration Services (USCIS) on January 21, 2011, to support her contention that her traffic violations should not disqualify her from maintaining TPS.

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)

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The evidence of record reflects:

- On [REDACTED] 2010, in the County Court for and in [REDACTED] Florida, the Applicant pled no contest to operating a motor vehicle without a valid driver's license, a violation of Florida Statute 322.03(1), a misdemeanor of the second degree. Adjudication of guilt was withheld and the Applicant was ordered to pay a fine, court costs, and was placed on probation for four months.
- On [REDACTED] 2010, the Applicant, in the County Court for and in [REDACTED] Florida, the Applicant pled no contest to driving while license suspended, a violation of Florida Statute 322.34(2), a misdemeanor of the second degree. Adjudication of guilt was withheld and the applicant was ordered to pay a fine, court costs, and was placed on probation for three months.

Florida law provides that the maximum penalty for a conviction of a misdemeanor of the second degree is imprisonment for a period of not more than 60 days in jail or a fine of not more than \$500, or both such fine and imprisonment. *See* Florida Statutes sections 775.082(4) and 775.083(1).

On appeal, the Applicant asserts that she was charged and convicted under the same statute with two identical counts of not having a valid driver's license. The Applicant asserts that, based on her inability to renew her driver's license due to her immigration status, she was convicted of two identical counts arising out of a single scheme, so only one misdemeanor conviction.

The evidence of record indicates that on two separate dates, the Applicant was charged with distinct offenses, which were accordingly not based on one set of facts. Further, the determination of whether an applicant's crimes arose out of a single scheme of criminal misconduct is relevant when applying other sections of the Act, such as section 237(a)(2)(A)(ii), but has no bearing on the applicant's eligibility under section 244 of the Act.

The USCIS memorandum submitted by the Applicant specifically pertains to certain offenses for which the Florida courts have issued a "no jail" or "no incarceration" certification. For purposes of the TPS statute and regulations, USCIS has determined that a Florida offense that has such certification does not meet the definition of a misdemeanor under 8 C.F.R. § 244.1 as it would not constitute an offense punishable by imprisonment. The court documents submitted by the Applicant do not indicate that a "no jail" or "no incarceration certification" was issued for her violations, pursuant to Rule 3.994 of the Florida Rules of Criminal Procedure.

The submitted court documents reflect that the applicant pled no contest to each charge and the judge ordered some form of penalty and restraint on the applicant's liberty for each charge above. Therefore, for immigration purposes, the applicant has been convicted of misdemeanor offenses within the meaning of section 101(a)(48)(A) of the Act.

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We have reviewed the Applicant's brief on appeal, the authorities cited therein, and her humanitarian request for TPS, but conclude that the Applicant remains ineligible for TPS due to her two misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw TPS and deny the application for re-registration 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-L-*, ID# 14529 (AAO Sept. 24, 2015)