



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

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

MATTER OF R-C-

DATE: SEPT. 24, 2015

APPEAL OF NEBRASKA 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, Nebraska Service Center, withdrew the Applicant's 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 January 29, 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 he does not have two misdemeanor convictions for immigration purposes because his conviction for harassment is classified under Pennsylvania law as a summary offense.

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 applicant 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).

"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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Section 101(a)(48)(B) of the Act provides, “any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.”

The record contains certified court documentation from [REDACTED] Courthouse (Pennsylvania), which indicates that on [REDACTED] 2008, the Applicant pled *nolo contendere* to violating 18 Pa. Cons. Stat. § 2701(a)(1), simple assault, a misdemeanor of the second degree, and 18 Pa. Cons. Stat. § 2709(a)(1), harassment-subject other to physical contact, a summary offense. The applicant was sentenced to a minimum of thirty days imprisonment, suspended, ordered to pay court costs, and was placed on probation for six months. The court entered *nolle prosequi* for the remaining charges.

Citing to *Matter of Eslamizar*, 23 I&N Dec. 684 (BIA 2004), the Applicant asserts that the purpose and intent of the Commonwealth of Pennsylvania is to classify certain prohibited conduct as non-criminal summary offenses. The evidence of record does not indicate that the Applicant’s plea to a summary offense was insufficient to withstand constitutional scrutiny.

Further, Pennsylvania law defines the term “crime” as an offense for which a sentence of death or of imprisonment is authorized constitutes a crime. 18 Pa. Cons. Stat. § 106(a). A summary offense is defined as an offense if it is so designated. 18 Pa. Cons. Stat. § 106(c). A summary offense, which carries a sentence of imprisonment of up to 90 days, has been defined as a crime. *See Commonwealth v. Matty*, 422 PA. Super. 595, 619 A.2d 1383, 1386 (1993); *Lewis v. Commonwealth*, 74 Pa. Commw. 335, 459 A.2d 1339, 1341 (1983); *Interest of Golden*, 243 Pa. Super. 267, 365 A.2d 157, 158-59 (1976).

The Applicant asserts that his summary offense violation is not a misdemeanor for immigration purposes, as the conviction did not result in a sentence of imprisonment of more than five days. However, a misdemeanor is defined as any offense that is punishable by imprisonment for a term of one year or less, regardless of the term actually served. 8 C.F.R. § 244.1. Upon conviction of a summary offense, an individual may be sentenced to up to 90 days imprisonment. *See* 18 Pa. Cons. Stat. §§ 106(c) and 1105. Accordingly, the Applicant’s harassment violation, a summary offense, qualifies as a misdemeanor for immigration purposes.

The submitted court dispositions reflect that the Applicant pled *nolo contendere* to the charges, and the judge ordered some form of punishment, penalty or restraint on the Applicant’s liberty to each charge above. As such, the Applicant has been convicted of the each offense within the meaning of section 101(a)(48)(A) of the Act.

The Applicant asserts that both charges arose out of the same action on the same date, at the same time, so that he was convicted of only one misdemeanor. However, the fact that the Applicant's crimes arose in a single incident does not preclude him from being found ineligible for TPS for his two misdemeanor convictions. While the determination of whether the Applicant’s crimes arose out of a single scheme of criminal misconduct is relevant to his removability under section 237(a)(2)(A)(ii) of the Act, this determination has no bearing on his eligibility for TPS under section 244 of the Act.

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The Applicant is ineligible for TPS due to his 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 and deny the application for registration on this ground 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 R-C-*, ID# 14061 (AAO Sept. 24, 2015)