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

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

MATTER OF P-A-R-L-

DATE: SEPT. 30, 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 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 Acting Director, Vermont Service Center, withdrew TPS and denied the application for re-registration. The matter is now before us on appeal. The appeal will be dismissed.

On April 15, 2014, the Acting Director withdrew the Applicant's TPS and denied the application for re-registration because the Applicant did not submit requested court documentation relating to his criminal record.

On appeal, the Applicant submits the court disposition relating to his driving under the influence arrest in 2000. Citing 8 C.F.R. § 244.9(a), the Applicant asserts that the demonstration of unavailability of the court disposition for his [REDACTED], 1997, arrest should be given consideration. The Applicant also asserts that a request has been placed to the Federal Bureau of Investigation (FBI) for any final disposition relating to his arrest on [REDACTED] 1997. The Applicant states that the FBI's response will be sent to supplement his appeal. To date, no further correspondence has been presented by the Applicant. Therefore, the record must be considered complete.

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 individual shall not be eligible for TPS under this section if the Secretary of the Department of Homeland Security finds that the individual 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. 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.*

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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.

The record reflects the Applicant's criminal history in the state of Nevada as follows:

1. On [REDACTED] 1997, the Applicant was arrested by the [REDACTED] for obstructing peace officer and disorderly conduct. The proceedings went to jury trial on [REDACTED] 1997. Court documentation from the [REDACTED] Court indicating the court case relating to this arrest had been destroyed in accordance to its retention period. A letter from the Nevada Department of Public Safety, Highway Patrol Division, indicating that it was not able to provide the arrest report due to its five-year retention period.
2. On [REDACTED] 2002, the Applicant was arrested by the [REDACTED] for driving under the influence of alcohol, no driver's license, and unsafe lane change. [REDACTED], 2003 in the [REDACTED] Court, the Applicant pled guilty to driving under the influence, a violation of NRS. 484.038, a misdemeanor. The Applicant was sentenced to time served and ordered to pay a fine and court costs and attend a traffic school and counseling program. The remaining charges were dismissed.
3. On [REDACTED] 2012, the applicant was arrested by the [REDACTED] for assault with a deadly weapon. On [REDACTED] 2013, the Applicant was convicted of a lesser offense of disorderly conduct, a misdemeanor. The Applicant was sentence to serve 60 days in jail (which was suspended), ordered to pay a fine and court costs, attended an impulse control counseling program and perform 50 hours of community service.

The court documentation from the [REDACTED] Court does not provide sufficient explanatory information to enable us to determine whether the offenses were dismissed. The Applicant has the burden to establish with affirmative evidence that the offenses were either dismissed or were in error. The Applicant asserts that such proof is unavailable and that he does not have control over the relevant documents.

However, notwithstanding the lack of requisite documentation for the Applicant's [REDACTED] 1997, arrest, the Applicant remains ineligible for TPS due to his two misdemeanor convictions for driving under the influence of alcohol and disorderly conduct. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). As such, the Applicant's assertions concerning his [REDACTED] 1997, arrest need to be considered at this time. There is no waiver available, even for humanitarian reasons, of the requirements stated above. Consequently, the Acting Director's decision to withdraw TPS and deny the application for re-registration will not be disturbed.

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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 P-A-R-L-*, ID# 14419 (AAO Sept. 30, 2015)