



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

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

MATTER OF R-A-R-

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, was granted Temporary Protected Status (TPS). *See* Section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a. On March 12, 2014, the Director, Vermont Service Center, withdrew the Applicant's TPS. The Applicant filed a Form I-290B, Notice of Appeal or Motion, that was rejected as being untimely filed. The matter is now before us on a motion to reconsider. The motion will be denied.

The record reflects that the Director denied the re-registration and withdrew the Applicant's TPS on March 12, 2014, because the Applicant had been convicted of two misdemeanors in the United States.

On motion the Applicant requests his case be reconsidered and submits copies of previously-submitted documents related to his convictions. In a statement submitted with his previous Form I-290B the Applicant stated that without TPS it is difficult for him to continue to work and support himself.

The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien 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. *See* 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.*

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the

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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.

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 establishes that on [REDACTED] 2012, the Applicant was convicted in the Eighth District Court, [REDACTED] Utah, of Impaired Driving, a Class B Misdemeanor, for which he was sentenced to six months in jail, placed on probation for one year, and ordered to pay \$1,405 in fines.

The record further establishes that on [REDACTED] 2002, the Applicant was convicted in Superior Court of California, [REDACTED] for Driving Under the Influence, in violation of California Vehicle Code section 23152(B), sentenced to 48 hours in jail, placed on probation for 36 months, and ordered to pay a fine of \$390.

As the above violations are punishable by a term of imprisonment of one year or less, they qualify as “misdemeanors” as defined for immigration purposes in 8 C.F.R. § 244.1.

On motion the Applicant has failed to provide argument or objective evidence to overcome the Director’s decision. Therefore the Applicant remains ineligible for TPS because he has been convicted of two or more misdemeanors committed in the United States. 8 C.F.R. § 244.4(a). Consequently, the Director’s decision to deny the application for re-registration and withdraw TPS 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 motion is denied.

Cite as *Matter of R-A-R-*, ID# 14348 (AAO Sept. 30, 2015)