



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

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

MATTER OF V-D-F-T-

DATE: AUG. 30, 2016

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 a decision withdrawing the Applicant's Temporary Protected Status (TPS). *See* Immigration and Nationality Act (the Act) section 244, 8 U.S.C. § 1254a. TPS provides lawful status and protection from removal for foreign nationals, of specifically designated countries, who register during designated periods, satisfy country-specific continuous residence and physical presence requirements, are admissible to the United States, are not firmly resettled in another country, and are not subject to certain criminal- and security-related bars.

The Director, Vermont Service Center, denied the application for re-registration, and withdrew the Applicant's TPS. In August 2015, the Director issued a notice of intent to deny (NOID), requesting the Applicant provide evidence of the final dispositions for all his arrests, including two arrests for driving under the influence (DUI) in [REDACTED] 2010 and [REDACTED] 2013. The Director concluded the Applicant did not adequately respond to the NOID.

The matter is now before us on appeal. In the appeal, the Applicant states that he is presently in the process of expunging his DUI convictions, and that he needs his work authorization in order to be able to continue supporting his U.S. citizen children.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking review of a decision withdrawing the Applicant's TPS. 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). 8 C.F.R. § 244.2 provides that an applicant is eligible for TPS if the applicant:

....

- (d) Is admissible as an immigrant except as provided under section 244.3;

- (e) Is not ineligible under 8 C.F.R. § 244.4

Section 101(a)(48)(A) of the Act provides that:

- (A) 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 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)(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.

Section 244(c)(2)(B) of the Act provides:

An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that-

- (i) the alien has been convicted of any felony or two or more misdemeanors committed in the United States, or

. . . .

The regulation at 8 C.F.R. § 244.1, states, in relevant part:

Felony means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

. . . .

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

(b)(6)

Matter of V-D-F-T-

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 felony or misdemeanor.

II. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

The Applicant, a native and citizen of Ecuador, seeks to renew his TPS. The record indicates that the Applicant was initially granted TPS in 2001. After past re-registration applications, in March 2015, the Applicant again filed Form I-821, Application for Temporary Protected Status, to re-register his TPS status.

The record indicates that the Applicant was arrested in [REDACTED] 2010, and charged with driving under influence (DUI), under the California Vehicle Code, section 23152. The record further indicates that the Applicant again arrested and charged with DUI under the California Vehicle Code, section 23152, in [REDACTED] 2013. The record indicates that the Applicant was convicted on both occasions.

In August 2015, the Director issued a NOID requesting the Applicant provide evidence of the final dispositions for all his arrests, including two arrests for DUI in [REDACTED] 2010, and [REDACTED] 2013.

In response to the NOID, the Applicant submitted the arrest report and the sentencing memorandum for his arrest in [REDACTED] 2013. He also submitted a Notice of Completion certificate, issued August 20, 2015, from the [REDACTED] indicating that he completed an 18-month multiple offender program at the [REDACTED] in [REDACTED] California, and that the Applicant was a second offender. Thus, the Applicant submitted documentation regarding the Applicant's second arrest for DUI in [REDACTED] 2013. However, the Applicant did not provide any documentation regarding his first arrest for DUI in [REDACTED] 2010.

On appeal, the Applicant states that he is presently in the process of expunging his DUI convictions. He also requests that his TPS be renewed on the basis of humanitarian principles, as he needs to support his three U.S. citizen children.

We have reviewed all the evidence in the record of proceeding.

III. ANALYSIS

The record indicates that the Applicant was granted TPS in 2001, and is currently applying to renew that status. The issue in this case is whether the Applicant is eligible to have his TPS renewed following his two arrests for DUI. We find that a violation of the California Vehicle Code, section 23152, driving under influence, is a misdemeanor, and therefore the Applicant is ineligible for TPS due to his two misdemeanor convictions pertaining to his two violations of that California code section.

As previously stated, the Applicant's criminal history indicates that he was arrested for DUI in [REDACTED] 2010 and [REDACTED] 2013, and he was convicted for DUI following both arrests. The record reflects that

(b)(6)

Matter of V-D-F-T-

both these arrests resulted in convictions under section 101(a)(48)(a) of the Act in 2010 and 2014. The Applicant does not contest these convictions on appeal.

At the time of the Applicant's convictions, section 23152 of the California Vehicle Code provided that it is a misdemeanor to drive with .08% or more of alcohol in the blood, and carries a maximum penalty of 6 months incarceration.

The regulation at 8 C.F.R. § 244.1 defines a misdemeanor as a crime "punishable by imprisonment for . . . one year or less, regardless of the term . . . actually served." As such, a misdemeanor is defined under the regulation by the maximum imprisonment possible for the crime under California law. In this case the Applicant was twice convicted of an offense punishable by up to 6 months incarceration, which meets the definition of a misdemeanor for immigration purposes in 8 C.F.R. §244.1.

Although the Applicant states that he is presently in the process of expunging his DUI convictions, there is no evidence in the record that the convictions have been expunged. In addition, under the current statutory definition of "conviction" provided at section 101(a)(48)(a) of the Act, no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999).

Therefore, the Applicant remains ineligible for TPS due to his two misdemeanor convictions. There is no waiver available, even for humanitarian reasons, of the requirements stated above. 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 due to his ineligibility for TPS.

IV. CONCLUSION

An applicant for TPS has the burden of proving that he or she meets the requirements for this benefit and is otherwise eligible under the provisions of section 244 of the Act. The Applicant has not established eligibility for TPS. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of V-D-F-T-*, ID# 17801 (AAO Aug. 30, 2016)