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

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

MATTER OF C-P-H-

DATE: FEB. 18, 2016

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. § 1254a. The Director, California Service Center, withdrew the Applicant's TPS and denied the application for re-registration. The matter is now before us on appeal. The appeal will be dismissed.

On August 16, 2014, the Director withdrew the Applicant's TPS and denied the application for re-registration because the Applicant had been convicted of two or more misdemeanors in the United States.

On appeal, the Applicant requests that his TPS status be reinstated as he has paid the civil penalties and complied with the courts' requirements. The Applicant asserts that he also has a family to support. The Applicant resubmits copies of the court documents relating to his arrest on [REDACTED] 2012, financial records, and a birth certificate.

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, 8 U.S.C. § 1254a(c)(2)(B) 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, 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

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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, 8 U.S.C. § 1101(a)(48)(A).

The record reflects the following:

- On [REDACTED] 2012, the Applicant was arrested and charged with driving under the influence. The charge was reduced to reckless driving, a violation of Florida Statute § 316.192(1)(a). On [REDACTED] 2013, the Applicant pled *nolo contendere* to this offense. Adjudication of guilt was withheld and the Applicant was ordered to pay a fine, pay court costs, perform 50 hours of community service, and he was placed on probation for 6 months.

A first conviction of reckless driving is punishable by imprisonment for not more than 90 days and a fine of not more than \$500, or by both such fine and imprisonment. *See* Florida Statute § 316.192(2)(a).

- On [REDACTED] 2005, the Applicant was arrested and charged with driving while license is suspended, a violating of Florida Statute § 322.34(2). On [REDACTED] 2005, the Applicant pled *nolo contendere* to this offense. Adjudication of guilt was withheld and the Applicant was ordered to pay a fine and court costs.

A first conviction of driving while license is suspended is punishable as a misdemeanor of the second degree. *See* Florida Statute § 322.34(2)(a). 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 by both such fine and imprisonment. *See* Florida Statutes §§ 775.082(4) and 775.083(1).

Where an alien pleads guilty or *nolo contendere*, or is found guilty, but entry of the judgment is deferred by the court to allow for a period of probation and/or completion of a diversion program, the alien has been convicted for immigration purposes even if the charges are later dismissed. *See Matter of Marroquin-Garcia*, 23 I&N Dec. 705, 714-15 (A.G. 2005); *Matter of Roldan-Santoyo*, 22 I&N Dec. 512 (BIA 1999).

The court documents submitted indicate that the Applicant pled *nolo contendere* to each charge above, and the judge issued some form of punishment, penalty, or restraint on the Applicant's liberty for each charge. Therefore, the Applicant has been convicted of reckless driving and driving while license is suspended. *Marroquin-Garcia*, 23 I&N Dec. at 715 and section 101(a)(48)(A) of the Act.

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 Florida law. In this case the Applicant was convicted of offenses punishable by up to 90 and 180 days

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incarceration, both of which meet the definition of a misdemeanor for immigration purposes in 8 C.F.R. § 244.1.

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 denied 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 C-P-H-*, ID# 15239 (AAO Feb. 18, 2016)