



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

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

MATTER OF E-J-

DATE: JAN. 29, 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. § 1254(a). 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 January 29, 2015, the 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 documentation of traffic citations and court documents relating to offenses committed in the state of Florida in [REDACTED] 2012 and [REDACTED] 2014.

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).

"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. There is an exception 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 8 C.F.R. § 244 of the Act, the crime shall be treated as a misdemeanor. 8 C.F.R. § 244.1.

"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.

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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, 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)(A) of the Act, 8 U.S.C. §1101(a)(48)(A).

The evidence of record indicates that the Applicant was arrested for violating Florida Statute 322.34(2), driving while license suspended, revoked, or canceled, on [REDACTED] 2007. On [REDACTED] 2013, the Applicant was arrested by the [REDACTED] Police Department in Florida and charged with violating Florida Statute 843.15, failure to appear for a felony offense. In a request for evidence dated July 2, 2014, the Applicant was requested to submit certified judgment and conviction documents from the courts for all arrests including the arrest on [REDACTED] 2013. The Applicant, however, did not respond to the notice.

On appeal, the Applicant submits documentation of traffic citations issued on [REDACTED] 2012, and [REDACTED] 2014, and a [REDACTED] County Sheriff's booking report dated [REDACTED] 2013, for driving while license suspended, revoked, or canceled, a violation of Florida Statute 322.34(2). Court documentation from the County Court of the Fifteenth Judicial Circuit in and for [REDACTED] Florida indicates that on [REDACTED] 2013, the Applicant was found guilty of violating Florida Statute 322.34(2), a misdemeanor of the second degree. The Applicant was ordered to pay court costs.

The Applicant did not submit the requested court disposition for violating Florida Statute 322.34(2) on [REDACTED] 2007. The Applicant therefore remains ineligible for TPS because he did not provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the Director's decision to withdraw TPS and deny the application for re-registration on this ground will be affirmed.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The regulation at 8 C.F.R. § 208.20 provides:

For applications filed on or after April 1, 1997, an applicant is subject to the provisions of section 208(d)(6) of the Act only if a final order by an immigration judge or the Board of Immigration Appeals specifically finds that the alien knowingly filed a frivolous asylum application. For purposes of this section, an asylum application is frivolous if any of its material elements is deliberately fabricated. Such finding shall only be made if the immigration judge or the Board is satisfied that the applicant, during the course of the proceedings, has had sufficient opportunity to account for any discrepancies or implausible aspects of the claim. For purposes of this section, a finding that an alien filed a frivolous asylum application shall not preclude the alien from seeking withholding of removal.

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The record reflects that a Form I-862, Notice to Appear, was issued and served on the Applicant on April 27, 2000. On October, 5, 2000, the Applicant, through counsel, was notified by personal service of the privilege of counsel and consequences of knowingly filing a frivolous asylum application pursuant to section 208(d)(4) of the Act, 8 U.S.C. § 1158(d)(4). The Applicant's Form I-589, Application for Asylum and Withholding of Removal, was filed on January 25, 2001. The Form I-589 advised the Applicant that if it is determined that he knowingly filed a frivolous application for asylum, he would be permanently ineligible for any benefits under the Act.

On [REDACTED] 2001, a removal hearing was held, after which the Applicant's applications for asylum, withholding of removal and convention against torture were denied, and he was ordered removed from the United States. The oral decision of the immigration judge (IJ) indicates that the court found the Applicant to have knowingly filed a frivolous application for asylum, permanently barring the Applicant from receiving any benefits under the Act under section 208(d) of the Act. The Applicant appealed the IJ's decision to the Board of Immigration Appeals (the Board). On September 25, 2002, the Board, affirmed without opinion, the IJ's decision.

As the court found the Applicant to have knowingly filed a frivolous application for asylum, he is permanently ineligible for any benefits under the Act pursuant to section 208(d)(6) of the Act. Despite the temporary nature of TPS, it is a benefit nonetheless. We are bound by the clear language of the statute. There is no waiver available, even for humanitarian reasons, due to the Applicant's ineligibility pursuant to section 208(d)(6) of the Act. Therefore, we find that the Applicant is also ineligible for TPS based upon his filing of a frivolous application for asylum.

The appeal is dismissed for the above stated reasons. 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 E-J-*, ID# 14777 (AAO Jan. 29, 2016)