



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

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

MATTER OF W-E-L-

DATE: MAY 18, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE 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. *See* Immigration and Nationality Act (the Act) section 244, 8 U.S.C. § 1254a. Temporary Protected Status (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 Acting Director, Vermont Service Center, withdrew the Applicant's TPS. The Director concluded that the Applicant had been convicted of two misdemeanors in the United States. We dismissed an appeal and denied a subsequent motion to reopen as untimely filed.

The matter is now before us on a second motion to reopen. In the motion, the Applicant submits additional evidence and claims that he has no criminal cases pending before the court. The Applicant request that his TPS be reinstated in order for him to legally work in the United States as he has a family to support.

We will deny the motion.

I. LAW

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

II. ANALYSIS

The Applicant must demonstrate that his submission meets the definition of a motion to reopen under 8 C.F.R. §103.5(a)(2). On motion, the Applicant provides additional documentation on his criminal convictions, and requests further review of his case, as he indicates he needs an employment authorization document to support his family. We find that the documents submitted do not reflect any new facts related to his TPS eligibility, as they reflect he still has two misdemeanor convictions. Therefore, the motion will be denied.

(b)(6)

Matter of W-E-L-

As explained in our decision on appeal, the Applicant, on [REDACTED] 2011, admitted to sufficient facts for a guilty finding to violating Massachusetts General Laws Annotated chapter 90, sections 24(j) and 24(o), operating a motor vehicle under the influence of liquor, and reckless operation of a motor vehicle. The Applicant was ordered to pay fines and costs, undergo an alcohol related program, and submit to administrative supervision. Pursuant to 8 C.F.R. § 244.14(a)(1), the Director withdrew the Applicant's TPS due to his misdemeanor convictions in the United States. In dismissing the appeal, we upheld the Director's decision. We determined that the Applicant had been convicted of the misdemeanor offenses within the meaning of section 101(a)(48)(A) of the Act. We also determined that the closure of the Applicant's criminal cases subsequent to the completion of his probation did not remove the convictions for immigration purposes. Pursuant to 8 C.F.R. § 103.5(a)(1)(i), we denied the Applicant's subsequent motion to reopen as it was untimely filed. The regulation at 8 C.F.R. § 103.5(a)(1)(i) allows us to accept an untimely motion to reopen if an applicant demonstrates that the delay was reasonable or beyond his or her control. However, we found that the Applicant did not assert or submit evidence to establish that the failure to file a motion within the prescribed time was reasonable and beyond his control.

On this current motion, the Applicant states that he has no cases pending before the courts and submits additional court documentation from the [REDACTED] Commonwealth of Massachusetts, which includes the [REDACTED] 2012, final disposition of "Dismissed on recommendation of Probation Dept."

However, the evidence submitted on motion does not satisfy the requirements of 8 C.F.R. § 103.5(a)(2). The Applicant does not claim, nor does he provide evidence to show the existence of any new facts not previously discussed. Furthermore, the Applicant, on motion, has not addressed the basis for the denial of the initial motion and has not demonstrated that the untimely filing of that motion was reasonable and beyond his control. Therefore, the current motion does not meet the requirements for a motion to reopen under 8 C.F.R. § 103.5(a)(2).

III. 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 maintained eligibility for TPS. The evidence provided in support of the motion to reopen does not overcome the ground underlying our July 2, 2015, decision.

ORDER: The motion to reopen is denied.

Cite as *Matter of W-E-L-*, ID# 15845 (AAO May 18, 2016)