



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

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

MATTER OF M-J-R-V-

DATE: SEPT. 19, 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, withdrew the Applicant's TPS. The Director concluded that the Applicant was not eligible for TPS because she had been convicted of two misdemeanor offenses committed in the United States.

The matter is now before us on appeal. In the appeal, the Applicant states that the Director erred in concluding that she was convicted of more than one misdemeanor offense. While the Applicant concedes that she was convicted of a misdemeanor violation of the Arkansas Hot Check Law, the Applicant asserts that her two convictions for driving with a suspended license should be considered traffic infractions and, as such, they should not affect her eligibility for TPS.

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).

Section 244(c)(2)(B) of the Act, 8 U.S.C. § 1254a(c)(2)(B), provides that:

[a]n alien shall not be eligible for temporary protected status under this section if the [Secretary of Homeland Security] finds that-

(b)(6)

Matter of M-J-R-V-

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

The regulation at 8 C.F.R. § 244.1 defines “misdemeanor” as:

[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 felony or misdemeanor.

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.

II. ANALYSIS

At issue in these proceedings is whether the Applicant’s convictions for the offense of driving under suspended or revoked license in violation of section 27-16-303 of the Arkansas Statutes Annotated (Ark. Code Ann. § 27-16-303) qualify as misdemeanor convictions for purposes of TPS eligibility. Upon review of the entire record, we conclude that they do, and that the Applicant is therefore ineligible for TPS under section 244(c)(2)(B) of the Act.

A. Eligibility

As stated above, the Director determined that the Applicant was statutorily ineligible for TPS, because she has been convicted of at least two misdemeanors committed in the United States. The record reflects the following:

- In [REDACTED] 2013, the Applicant was convicted in the District Court of [REDACTED] Arkansas, of violation of Ark. Code Ann. § 5-37-302, the Arkansas Hot Check Law;

Matter of M-J-R-V-

- In [REDACTED] 2013, the Applicant was convicted for driving while license cancelled, suspended, or revoked, in violation of Ark. Code Ann. § 27-16-303. She was ordered to pay fees, costs, and fines;
- In [REDACTED] 2014, the Applicant was convicted again for driving while license cancelled, suspended, or revoked, in violation of Ark. Code Ann. § 27-16-303. She was ordered to pay fees, costs and fines.

The record reflects that the Applicant pleaded guilty to violation of the Arkansas Hot Check Law, and was found guilty of the offense by the court. A formal judgment of guilt entered by the court meets the definition of conviction for immigration purposes in section 101(a)(48)(A) of the Act. In addition, Ark. Code Ann. § 5-37-305(a)(1) (2013) provides that a person found guilty of a violation under Ark. Code Ann. § 5-37-302 is guilty of an unclassified misdemeanor and shall receive a fine of not less than \$50, not more than \$500, or imprisonment in the county jail or a regional detention facility not to exceed 30 days, or both. Because the violation of the Arkansas Hot Check Law is punishable by imprisonment of up to 30 days, it meets the definition of misdemeanor for TPS purposes in 8 C.F.R. § 244.1. Accordingly, the Applicant's conviction for violation of the Arkansas Hot Check Law is a misdemeanor offense for the purposes of establishing eligibility for TPS. The Applicant does not dispute this finding on appeal.

The Applicant contends, however, that her convictions for driving on a suspended license are traffic infractions and, as such, they should not affect her eligibility for TPS. In support of this claim, the Applicant submits a copy of a U.S. Citizenship and Immigration Services (USCIS) internal memorandum,¹ which provides guidance for adjudication of TPS applications and administrative appeals in cases involving convictions of certain minor New York traffic infractions or violations. The Applicant cites the memorandum, stating that although many New York traffic infractions are punishable by imprisonment of more than 5 days, they do not satisfy the requirements for a criminal conviction and thus do not fall within the definition of a "misdemeanor" in 8 C.F.R. § 244.1. The Applicant asserts that although many traffic offenses in Arkansas are classified as misdemeanors, they are separate from the criminal code and require a different *mens rea*, so they should not be treated as criminal misdemeanors. The Applicant claims that the USCIS guidance regarding New York traffic infractions should be applied to her Arkansas convictions for driving on a suspended license. We find that the guidance in the memorandum referenced by the Applicant is not applicable to her case, as it pertains specifically to offenses which are defined as "traffic infractions" and "violations" under New York law. At the time the Applicant was convicted in 2013 and 2014, Ark. Code Ann. § 27-16-303, provided that:

- (a) (1) Any person whose driver's license or driving privilege as a resident or nonresident has been cancelled, suspended, or revoked as provided in this chapter

¹ Memorandum from Donald Neufeld, Associate Director, Service Center Operations, and Perry J. Rhew, Chief, Administrative Appeals Office, *Temporary Protected Status (TPS) adjudications involving New York Traffic infractions or violations* (January 17, 2010), <https://www.uscis.gov/laws/policy-memoranda>.

and who drives any motor vehicle upon the highways of this state while the license or privilege is cancelled, suspended, or revoked is guilty of a misdemeanor.

(2) Upon conviction, an offender shall be punished by imprisonment for not less than two (2) days nor more than six (6) months, and there may be imposed in addition thereto a fine of not more than five hundred dollars (\$500).

As set forth in the statute, the offense of driving on suspended license is classified as a misdemeanor punishable by imprisonment for not less than 2 days and not more than 6 months. Therefore, the offense it is also a misdemeanor for the purposes of TPS eligibility, because the term of imprisonment which may be imposed for it exceeds the 5 days excepted by the regulation. *See* 8 C.F.R. § 244.1.

The Applicant claims that pursuant to the memorandum, TPS applications and administrative appeals should not be denied solely on the basis of convictions for minor violations of local town, city or county laws and ordinances in New York where such violations are not termed “misdemeanors” by the local governing authority. Neufeld/Rhew Memorandum, *supra*, at 2. However, the offense of which the Applicant was convicted on two occasions, driving with suspended license, is classified as a misdemeanor by the state of Arkansas. Accordingly, we may not consider it an “infraction” or “violation” which would fall within the scope of the USCIS guidance, even if we were to apply this guidance to offenses committed outside of the state of New York.

The Applicant also states that according to USCIS guidelines, driving without a license is not considered a misdemeanor in applications for the immigration benefits under Deferred Action for Childhood Arrivals (DACA), and that for the purposes of eligibility for adjustment of status and naturalization, traffic violations are not considered crimes unless they involve driving under the influence or a fine imposed is in excess of \$500. However, the Applicant is not applying for any of the immigration benefits she references. Accordingly, the issue of when traffic offenses are considered crimes that disqualify an individual from receiving these benefits is not relevant in these proceedings.

In view of the above, we find that the Applicant was convicted of three misdemeanor offenses in the United States, and that for this reason she is ineligible for TPS pursuant to section 244(c)(2)(B)(i) of the Act.

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 established eligibility for TPS. Accordingly, we dismiss the appeal.

Matter of M-J-R-V-

ORDER: The appeal is dismissed.

Cite as *Matter of M-J-R-V-*, ID# 17195 (AAO Sept. 19, 2016)