



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

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

MATTER OF T-N-

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 Syria, 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 he 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 admits the convictions, but states that he intends to file a motion to vacate his criminal conviction for driving under the influence of alcohol. In the brief submitted with the appeal, the Applicant indicated that once the motion to vacate was granted he would provide us with a copy within 30 calendar days. As of the date of this notice, we have not received additional evidence. We will therefore consider the record complete.

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)

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- (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

The Director determined that the Applicant was ineligible for TPS under section 244(c)(2)(B) of the Act, because he was convicted of two misdemeanors. Upon review of the entire record, we find that the Director’s decision withdrawing the Applicant’s TPS was correct.

The record reflects that in 2013, in the Superior Court of California, [REDACTED] the Applicant pleaded guilty to:

- Driving under the influence of an alcoholic beverage (DUI), in violation of section 23152(a) of the California Vehicle Code; and
- Driving while having a blood alcohol concentration of 0.08 percent or more, in violation of section 23152(b) of the California Vehicle Code.

The Applicant was granted summary probation for a period of 36 months, conditioned upon completion of work release and first offender DUI programs and payment of fines, penalties and pre-sentence incarceration costs. Because the Applicant pleaded guilty to the offenses and the judge

ordered punishment, the Applicant was convicted for immigration purposes as provided in section 101(a)(48)(A) of the Act.

The offenses of which the Applicant was convicted are punishable by imprisonment in the county jail for up to 6 months. Cal. Veh. Code § 23536 (2013). Accordingly, both offenses are considered “misdemeanors” as defined in 8 C.F.R. § 244.1.

The Applicant does not dispute that he was convicted of the two misdemeanor offenses listed above. The Applicant claims, however, that he was not properly advised of the immigration consequences of pleading guilty to violation of Cal. Veh. Code § 23152(b), and that he intended to file a motion to vacate the conviction on that basis. However, the Applicant has not submitted documentation to show that the conviction has been vacated. We must conclude, therefore, that the Applicant remains convicted of two misdemeanor offenses committed in the United States. As such, he 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.

ORDER: The appeal is dismissed.

Cite as *Matter of T-N-*, ID# 17196 (AAO Sept. 19, 2016)