



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

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

MATTER OF B-L-M-

DATE: SEPT. 21, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

APPLICATION: FORM I-821, APPLICATION FOR TEMPORARY PROTECTED STATUS

The Applicant, a native and citizen of Honduras, 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. Temporary Protected Status 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, denied the application to re-register and withdrew the Applicant's TPS because the Applicant had not provided complete documentation of her criminal history. As a result, the Director determined that the Applicant had not met the requirements for re-registration.

The matter is now before us on appeal. The Applicant submits a brief and additional evidence, including the previously requested documents, and she states she is eligible for TPS as she has not been convicted of a felony or two misdemeanors.

Upon *de novo* review we will dismiss the appeal, as the Applicant has been convicted of a felony and is therefore ineligible for TPS.

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 provides:

An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that-

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

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.

The regulation at 8 C.F.R. § 244.1, states, in relevant part:

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, except: 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 section 244 of the Act, the crime shall be treated as a misdemeanor.

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II. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

The Applicant entered the United States in 1989 without inspection. She was initially granted TPS in 2000 and applied for re-registration thereafter. Her TPS was renewed periodically until 2014, when she filed her most recent application for re-registration. The Applicant was issued a notice of intent to deny (NOID) in 2015, which explained that the documentation for her application was incomplete. The NOID requested the certified judgment and conviction documents for her prior arrests and provided a set deadline by which the Applicant must submit the documents. The NOID also stated that the application would be deemed abandoned and denied if the Applicant did not respond. After the deadline passed without a response from the Applicant, U.S. Citizenship and Immigration Services (USCIS) denied the Form I-821, Application for Temporary Protected Status, and withdrew the Applicant's TPS, as the Applicant did not submit all documentation required in the Form I-821 instructions or requested by U.S. Citizenship and Immigration Services USCIS. *See* 8 C.F.R. §§ 244.14(a)(3), 244.9(a).

The Applicant subsequently filed the instant appeal and provided additional records pertaining to her arrests. In 2016, we issued a notice of intent to dismiss, stating that the records submitted on appeal were not sufficient to establish that the Applicant's arrests had not resulted in a conviction for

immigration purposes, as defined below. We explained that the records for the Applicant's 2001 arrest were incomplete, that some records were not certified, and that information available to us indicated that she had been convicted of a felony. We provided the Applicant the opportunity to submit additional evidence to rebut our information.

The Applicant responded to the notice of intent to dismiss with additional certified records of the disposition of the charges that had been filed against her. The record also contains past immigration applications, forms, and related correspondence; additional court records pertaining to the Applicant's arrests; passports, drivers' licenses, birth certificates, and other identity documents; court orders regarding her children; and financial, employment, rental, and tax records. The entire record has been reviewed.

III. ANALYSIS

The issue presented on appeal is whether the Applicant has been convicted of a felony or two misdemeanors which would render her ineligible for TPS. The Applicant claims the record establishes that only one of her arrests resulted in a guilty plea, and that since the charge was subsequently dismissed, she does not have any convictions for immigration purposes.

We find that the record, now complete, shows that the Applicant's guilty plea resulted in a conviction for immigration purposes, and that the offense constitutes a felony. Accordingly, the Applicant is ineligible for TPS.

A. Criminal Record and Conviction

The certified court documentation in the record reflects the following:

- In 2001, the Applicant was charged with False Application or False Swearing (False Application) under Va. Code Ann. § 63.1-107.1 for knowingly making a false application for assistance. The court subsequently ordered the charge nolle prossed.
- In 2001, the Applicant was also charged with False Statements, Representations, Impersonations, and Fraudulent Devices (False Statements) under Va. Code Ann. § 63.1-124 for fraudulently obtaining welfare assistance. She pled guilty to this charge and was sentenced to 5 years of incarceration, which suspended for 5 years as she was placed on probation until she paid \$8,065 restitution. She was also granted credit for time served and ordered to pay court costs.
- In 2007, the Applicant pled guilty to violating her probation for False Statements under Va. Code Ann. § 19.2-306. As a result, the court revoked her probation and ordered her to serve 5 years of incarceration, but suspended the sentence for 5 years. The Applicant was also placed on probation, ordered to pay court costs, and granted credit for time served.
- In 2009, the Applicant was arrested and charged with Retail Theft under Fla. Stat. Ann. § 812.015(1)(d). The charge was administratively dismissed in 2014. Records do not indicate that a plea was entered, or that any court action was taken

- In 2015, the Applicant was arrested on a *capias* for Failure to appear for a restitution review on her False Application charge, pursuant to Va. Code Ann. § 18.2-456. The *capias* was subsequently dismissed, and she paid \$2,075 in restitution fees.

On appeal, the Applicant asserts that none of these dispositions meet the definition of a conviction under section 101(a)(48)(A) of the Act. She states that the False Application charge was *nolle prossed* and the Retail Theft charge was dismissed without any plea or finding of guilt and without a judge ordering any penalty, punishment, or restraint on her liberty. We agree that the record lacks any evidence that the Applicant pled guilty or was found guilty of either of these two charges, and there is no indication that any judge ordered any kind of penalty.

The Applicant also claims that the disposition of her False Statements charge does not constitute a conviction. In her appeal, she says that she paid her restitution of \$2,075 and her case was dismissed, and she refers to a receipt for payment from 2015.

We disagree with the Applicant's characterization of the record relating to her False Statements charge. The record reflects that the Applicant pled guilty to the False Statements charge, thus meeting the first prong of the conviction definition. As a result of her guilty plea, the court ordered imprisonment, suspended on condition that the Applicant satisfy the terms of probation, including payment of restitution. These consequences constitute penalties, punishments, and restraints on the Applicant's liberty in accordance with the second prong of the conviction definition. Thus, the 2001 conviction for False Statements is a conviction for immigration purposes.

There is no evidence indicating that the conviction for False Statements has been overturned, set aside, or dismissed. The dismissal documented in the record of the Applicant's 2015 arrest does not pertain to the False Statements charge. Rather, it pertains to the Failure to Appear charge under Va. Code Ann. § 18.2-456.

In sum, the record reflects that the Applicant has a valid conviction for False Statements.

B. Classification of the Applicant's Conviction

As previously stated, the Applicant has been convicted of False Statements under Va. Code Ann. § 63.1-124 (1995). At the time of the Applicant's conviction, this offense was punished as Grand Larceny, which was punishable by imprisonment in a state correctional facility for a term between 1 and 20 years. Va. Code Ann. § 18.2-95. Additionally, the court records reflect that the Applicant was charged and pled guilty to the offense as a felony, and Virginia law provided that offenses punishable by confinement in a state correctional facility are felonies. *See* Va. Code Ann. § 18.2-8.

In view of the Applicant's court records and relevant Virginia law, the Applicant's conviction for False Statements is punishable by imprisonment for more than 1 year and thus constitutes a felony for the purposes of TPS.

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As a result the Applicant's criminal conviction for a felony, she is ineligible for TPS.

IV. 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 B-L-M-*, ID# 123697 (AAO Sept. 21, 2016)