



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

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

MATTER OF J-L-

DATE: SEPT. 21, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native and citizen of Haiti, seeks 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 Director, California Service Center, denied the application for re-registration, concluding that the Applicant had been convicted of a felony in the United States and was therefore ineligible for TPS. We upheld the Director's decision and dismissed a subsequent appeal.

The matter is now before us on motion to reconsider. In the motion, the Applicant submits additional evidence and claims that U.S. Citizenship and Immigration Services (USCIS) erred by not considering his approved Form I-601, Application for Waiver of Grounds of Inadmissibility, and his prior grant of TPS. He also states that over 14 years have passed since he committed the offense that forms the basis of the decision to deny his TPS.

We will deny the motion to reconsider, as the Applicant's claims do not overcome the finding that he has been convicted of a felony for immigration purposes.

**I. LAW**

The Applicant is seeking TPS. Section 244(c)(1)(A)(iii) of the Act, 8 U.S.C. § 1254a(c)(1)(A)(iii), provides that an applicant is not eligible for TPS if the applicant is inadmissible to the United States or ineligible under section 244(c)(2)(B) of the Act, 8 U.S.C. § 1254a(c)(2)(B).

Section 244(c)(2)(B) of the Act provides that an applicant is ineligible for TPS if he has been convicted of any felony or two or more misdemeanors committed in the United States. 8 C.F.R. § 244.1 defines a felony as a crime committed in the United States that is punishable by imprisonment of more than 1 year.

The TPS felony definition does not include crimes characterized by states as misdemeanors, when the sentence actually imposed is 1 year or less. Rather, under 8 C.F.R. § 244.1, these crimes would also be defined as misdemeanors for TPS purposes. The TPS misdemeanor definition further includes crimes committed in the United States that are punishable by 1 year or less, but not less than 5 days. *Id.*

## II. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

The Applicant entered the United States without inspection in 1998. Later that year, he filed an I-589, Application for Asylum and for Withholding of Removal, which was referred to an Immigration Judge. In 2001, the Immigration Judge denied asylum and withholding of removal and ordered the Applicant removed from the United States. The Applicant filed an appeal with the Board of Immigration Appeals (the Board), but the Board affirmed the Immigration Judge's decision and dismissed the appeal in 2003. His subsequent motion to reopen removal proceedings was denied by the Board in 2004. In 2008, an I-360, Petition for Amerasian, Widow(er) or Special Immigrant was filed on the Applicant's behalf, seeking his classification as a Special Immigrant Religious Worker; the petition was denied. The Applicant filed a Form I-601 in 2010, seeking to waive his inadmissibility for fraud or misrepresentation under section 212(i) of the Act. USCIS records indicate that a decision on this Form I-601 is still pending.

In 2010, the Applicant was initially granted TPS, and he subsequently applied for re-registration, which was renewed until 2014, when he filed his most recent application for re-registration. The California Service Center denied his re-registration application in 2014, and he subsequently filed an appeal with this office. We dismissed the appeal in 2015, and the Applicant filed the instant motion to reconsider later that year.

The record consists of the Applicant's brief on motion to reconsider; records pertaining to his criminal history; affidavits from the Applicant; affidavits and letters of support attesting to his character and residence in the United States; immigration applications, forms, and related correspondence; birth and death certificates; passports; tax, financial, employment, and utility records; reports on conditions in Haiti; records from Immigration Court, including transcripts of hearings; and records from the Board of Immigration Appeals.

The entire record has been reviewed.

## III. ANALYSIS

The issue on appeal is whether the Applicant is ineligible for TPS for having been convicted of a felony committed in the United States. The Applicant does not contest the determination that he has been convicted of a felony, a finding which is supported by the record. Rather, he asserts that he should be approved for TPS because he was previously approved for TPS and for a related waiver of inadmissibility, and because over 14 years have passed since his conviction.

After reviewing the record, we conclude that the Applicant's claims are not supported by relevant law.

A. Conviction of a Felony

In 2001, the Applicant pled guilty, and was convicted of, Harassment – Stalking, a Class 6 felony under Col. Rev. Stat. Ann. § 18-9-111(4) (West 2001). At the time of his conviction, the offense was punishable by imprisonment between 18 months and 24 months. Col. Rev. Stat. Ann. §§ 18-1-105(1)(a)(I)(V)(A), 9.7(a), and 9.7(b)(XIII) (West 2001). The Applicant was sentenced to 1 year of probation, including completion of a domestic violence counseling program, and ordered to pay \$303.50 in costs.

As previously stated, the disposition of this offense constitutes a conviction under section 101(a)(48)(A) of the Act, as the Applicant entered a plea of guilty, and the court entered a formal judgment of guilt. The offense constitutes a felony under the TPS regulations, as it is punishable by imprisonment for more than 1 year.

B. Prior Immigration Applications

The Applicant claims that, despite his conviction for a felony, he remains eligible for TPS because he was initially granted TPS and because he has an approved Form I-601 waiving his conviction.

While the record reflects that the Applicant was initially granted TPS, and a later re-registration application was approved, this history does preclude USCIS from denying or withdrawing his TPS at any time if information shows that the Applicant was not in fact eligible at the time TPS was granted. *See* 8 C.F.R. § 244.14(a)(1).

The Applicant's claim regarding his Form I-601 does not establish his eligibility for TPS, as ineligibility for conviction of a felony is not waivable.<sup>1</sup> While certain grounds of inadmissibility may be waived under 8 C.F.R. § 244.3(b), there is no equivalent provision for ineligibility under § 244.4.

C. Passage of Time Since Conviction

The Applicant also claims that he should be eligible for TPS because over 14 years have passed since his conviction for Harassment – Stalking, and he has not been convicted of any other offenses. However, there is no basis in the statutes or regulations for the Applicant's claim. There is no time limit on an applicant's ineligibility following a conviction in either section 244(c)(2)(B) of the Act or 8 C.F.R. § 244.4. Further, both the Act and the regulations are clear that a single felony conviction suffices to render an application ineligible.

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<sup>1</sup> Additionally, the record reflects that the Applicant's Form I-601 has not been approved, but is still pending. Nonetheless, even if the Form I-601 were approved, it would not relieve the Applicant's TPS ineligibility.

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In totality, the record establishes that the Applicant is ineligible for TPS on the basis of his conviction for a felony committed in the United States, for which no waiver or exemption is available.

#### 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 deny the motion.

**ORDER:** The motion to reconsider is denied.

Cite as *Matter of J-L-*, ID# 116226 (AAO Sept. 21, 2016)