U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-A-G-

DATE: SEPT. 27, 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. 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 his criminal history. The Director previously issued a notice of intent to deny (NOID) stating that the Applicant had not provided the judgment and conviction documents for two of his arrests. The NOID instructed the Applicant to provide the missing documents, explaining that re-registration would be denied, and TPS would be withdrawn if the Applicant did not respond timely with the requested information. The Applicant did not respond to the NOID. As a result, the Director determined that the Applicant had not re-registered as required and withdrew 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 matter is now before us on appeal. In the appeal, the Applicant states that the Director erred in withdrawing his TPS because the documentation pertaining to his arrests had been previously submitted.

Upon *de novo* review, we will dismiss the appeal, as the record does not contain all of the necessary documentation, and the existing record indicates that the Applicant is ineligible for TPS on account of his criminal convictions.

I. LAW

The Applicant is seeking TPS based on an application for re-registration or renewal of TPS benefits. 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).

Regarding the re-registration requirements, 8 C.F.R. § 244.17 provides:

> (a) Aliens granted Temporary Protected Status must re-register periodically in accordance with USCIS instructions. Such registration applies to nationals of those foreign states designated or redesignated for more than one year by DHS. Applicants for periodic re-registration must apply during the registration period provided by USCIS . . . .

When applying for re-registration, "[a]pplicants shall submit all documentation as required in the instructions or requested by the Service." 8 C.F.R. § 244.9(a).

An applicant's criminal record may affect his or her eligibility for TPS on various grounds. 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-
>
> (i) 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:

> . . . .
>
> *Misdemeanor* means 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 . . . .

> For purposes of this definition, any crime punishable by a maximum term of five days or less shall not be considered a . . . misdemeanor.

The burden of proof is upon the Applicant to establish that the above requirements are met. *See* 8 C.F.R. § 244.9(a)(3). Applicants shall submit all documentation as required in the instructions or requested by U.S. Citizenship and Immigration Services (USCIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). To meet this burden of proof, the Applicant must provide supporting documentary evidence of eligibility apart from the Applicant's own statements. *Id.*

II. ANALYSIS

The issue presented on appeal is whether the Applicant has submitted evidence that his criminal history does not render him ineligible for TPS. The Applicant asserts that he has previously submitted the documentation pertaining to the arrests specified in the Director's NOID and decision letter, and he states that there is insufficient basis for withdrawing his TPS.

The record consists of copies of immigration records, including records from Immigration Court; criminal records from the state of California; statements from family members; divorce records; medical records; insurance and registration records; school records; employment, tax and financial records; reports on conditions in El Salvador; birth and marriage certificates; drivers' licenses, passports, and identity documents; certificate of ownership of a vessel; counseling progress reports and certificates; and affidavits attesting to his residency.

After reviewing the record in its entirety, we find that the Applicant has not submitted all documentation of his criminal history. Specifically, there are no records of his arrest and subsequent disposition for driving under the influence. Additionally, the records that are available indicate that he is ineligible for TPS for conviction of two misdemeanors.

A. Documentation of Criminal History

As described in the NOID, records checks indicate that the Applicant has been arrested on three occasions. In 1992, he was arrested and charged with petty theft; in 1999, he was arrested and charged with battery against a former spouse, and in 2014, he was arrested and charged with two offenses related to driving under the influence of alcohol (DUI). The Director's NOID requested certified judgment and convictions documents indicating the final disposition of the charges for petty theft and DUI.

The Applicant did not respond to the NOID. On appeal, he claims that the documents have previously been submitted, but he did not submit additional copies of any records. A thorough review of the Applicant's record reflects that no records pertaining to his 2014 arrest and DUI charges have been received. The Applicant has not provided sufficient evidence indicating the final

court disposition of his arrests, as detailed above. The Applicant is ineligible for TPS because he did not provide the information necessary for the adjudication of his application, as required by 8 C.F.R. § 244.9(a).

B. Ineligibility for Conviction of Two Misdemeanors

The limited evidence available regarding the Applicant's prior arrests and charges indicates that he has been convicted of two misdemeanors.

With respect to his arrest for petty theft, the Applicant has previously submitted a letter from the Superior Court indicating that the records for this case are no longer maintained, and therefore a copy cannot be provided. However, he also submitted a Criminal History Transcript from the State of California Department of Justice. Although the transcript is not a certified judgment and conviction, it states that the Applicant was convicted of petty theft under Cal. Pen. Code Ann. § 488 (West 1988)[1] and sentenced to 36 months of probation and work program. At the time of the Applicant's conviction, petty theft was punishable by imprisonment in county jail not exceeding 6 months. Cal. Pen. Code Ann. § 490 (West 1988). Accordingly, the transcript is evidence that a formal judgment of guilt was entered against the Applicant, which constitutes a conviction under section 101(a)(48)(A) of the Act, and the offense meets the definition of a misdemeanor for TPS purposes pursuant to 8 C.F.R. § 244.1.

According to available records, the Applicant also appears to have been convicted of Driving Under the Influence, Blood Alcohol 0.08 Percent or More, under Cal. Veh. Code Ann. § 23152(b) (West 2014), for which he was sentenced to 36 months of probation and payment of a fine. A first conviction for this offense is punishable by imprisonment in county jail for not less than 96 hours, up to 6 months. Cal. Veh. Code Ann. § 23536(a). The records thus indicate that the Applicant has a second conviction for a misdemeanor under section 101(a)(48)(A) of the Act and 8 C.F.R. § 244.1. The Applicant has not submitted certified records of the disposition of this charge, and thus has not met his burden to establish that he is eligible for TPS.

On appeal, the Applicant did not contest the arrests or indicate that he was not convicted for either of these offenses. Because the evidence he has submitted is incomplete, he has not met his burden to resolve the issue of his ineligibility on account of his criminal convictions. Therefore, we cannot conclude that he is eligible for TPS.

[1] Petty theft may also constitute a crime involving moral turpitude, which would render the Applicant inadmissible under section 212(a)(2)(A)(i) of the Act, and thereby ineligible for TPS pursuant to 8 C.F.R. 244.2(d). However, in this case, because the Applicant is ineligible for convictions of two misdemeanors, we need not determine whether the petty theft offense involves moral turpitude.

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 D-A-G-*, ID# 117645 (AAO Sept. 27, 2016)