



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

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

MATTER OF O-A-C-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. The Director concluded that the Applicant had been convicted of two misdemeanors committed in the United States and therefore was ineligible for TPS.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and states that the Director erred by misidentifying one of the offenses for which the Applicant was convicted.

Upon *de novo* review, we will dismiss the appeal, as the contested offense, driving with excessive blood alcohol content, does constitute a misdemeanor. Because the Applicant has two misdemeanor convictions, he is 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 states:

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

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, 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 . . . misdemeanor.

II. ANALYSIS

The issue in this appeal is whether the Applicant has been convicted of two or more misdemeanors committed in the United States. The record reflects that the Applicant has been convicted of two offenses, including a charge for Domestic Assault and a charge stemming from an arrest for Driving While Intoxicated (DWI). The Applicant does not contest the Domestic Assault conviction or its classification as a misdemeanor, a determination which is supported by the record.¹ Rather, he asserts that the DWI offense was amended to Driving with Excessive Blood Alcohol Content. The Applicant further asserts that, since the Director's reference to the DWI conviction in the decision to withdraw his TPS was in error, his TPS should be reinstated.

The record consists of a brief; records from the [REDACTED] Municipal Court; excerpts from Missouri Revised Statutes; immigration applications, forms, and related correspondence; copies of

¹ Domestic Assault – 3rd Degree – 1st/2nd Offense is a class A misdemeanor punishable by up to \$1,000 in fines and up to 1 year imprisonment. See Mo. Rev. Stat. §§ 565.704, 560.016.2(1), and 558.011.1(6). The Applicant was sentenced to 2 years of probation and ordered to pay \$141.50 in costs.

passports, driver's licenses, and other identity documents; and school and medical records. After reviewing the entire record, we conclude that the Applicant's conviction for Driving with Excessive Blood Alcohol Content also constitutes a misdemeanor. Because he has two misdemeanor convictions, he is ineligible for TPS.

As stated above, the Applicant has been found ineligible for TPS under section 244(c)(2)(B)(i) of the Act for two or more misdemeanor convictions. He does not contest the Domestic Assault conviction, but claims that his conviction stemming from his DWI charge does not support the withdrawal of his TPS.

In 2008, the Applicant pled guilty to the offense of Driving with Excessive Blood Alcohol Content (BAC).² The record reflects that this charge was amended from Driving While Intoxicated. Under Mo. Rev. Stat. § 577.012(3), a first conviction for BAC is a class B misdemeanor. Class B misdemeanors are punishable by fines up to \$500 and imprisonment up to 6 years. Mo. Rev. Stat. §§ 560.016.2(2) and 558.011.1(7). Because the offense of BAC is punishable by a term of imprisonment of more than 5 days and less than 1 year, it meets the definition of a misdemeanor under 8 C.F.R. § 244.1

Accordingly, the Applicant has two convictions for misdemeanors committed in the United States, and therefore he is ineligible for TPS as provided by section § 244(c)(2)(B) 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 O-A-C-G-*, ID# 117855 (AAO Sept. 27, 2016)

² He was sentenced to pay a fine of \$275.50.