



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

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

MATTER OF R-A-L-G-

DATE: SEPT. 30, 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 TPS re-registration application and withdrew TPS. The Director concluded the Applicant was ineligible for TPS as he was convicted of two misdemeanor offenses committed in the United States.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and states that he erred in that he remains eligible for TPS as one of his convictions was not a misdemeanor due to his completion of a diversion program.

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). An applicant is ineligible for TPS under 8 C.F.R. § 244.2 if the applicant:

....

- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4

(b)(6)

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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-

- (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, 8 U.S.C. § 1101(a)(48)(A), 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.

Finally, the regulation at 8 C.F.R. § 244.1, defines the term “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.

II. ANALYSIS

The issue in this case is whether the Applicant has two misdemeanor convictions which would render him ineligible for TPS.

The Applicant filed for re-registration of TPS. In August 2015, the Director issued a notice of intent to deny (NOID) to the Applicant, requesting an explanation regarding affirmative answers to questions on the Form I-821 as well as certified judgment and conviction documents for all of his arrests. The Director advised the Applicant that if a conviction document did not identify the classification of the offense, the Applicant’s response must include copies of relevant statutes, sentencing guides, or a statement from the court clerk to determine whether the offense was classified as a felony, misdemeanor, or other classification. In response to the NOID, the Applicant submitted certified court dispositions from the [REDACTED] Oregon, which showed the following:

(b)(6)

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- In [REDACTED] 2014, the Applicant pled guilty to driving under the influence of intoxicants (DUII) in violation of section 813.010 of the Oregon Revised Statutes. As reflected on the court records, a DUII is a Class A misdemeanor. The record reflects the Applicant entered a guilty plea in order to participate in the diversion program. The court ordered the Applicant to attend a victim impact panel, pay fees to the court, and install an ignition interlock device on his vehicle on his vehicle during the diversion program period. After successfully completing the diversion program, the Circuit Court dismissed the Applicant's DUII charge with prejudice;
- In [REDACTED] 2014, the Applicant pled guilty to driving while privileges suspended or revoked, in violation of section 811.182(4), of the Oregon Revised Statutes. As stated on the court records, a driving while privileges suspended or revoked offense is punishable as a Class A misdemeanor. The court sentenced the Applicant to 18 months of probation, and ordered payment of fines.

On appeal, the Applicant contends that his first arrest did not result in a conviction as he participated in a diversion program, and after completing the diversion program the Circuit Court dismissed the Applicant's DUII charge with prejudice. In support, the Applicant submits a brief along with court documents from his two offenses. The Applicant concedes that his second arrest resulted in a misdemeanor conviction. With only one misdemeanor conviction, Applicant contends, though, that he is eligible for TPS.

We conclude that the Applicant was convicted, as defined in section 101(a)(48)(A) of the Act, of a misdemeanor offense in the United States in relation to his DUII charge. Therefore, we find that the Applicant is ineligible for TPS based upon the two misdemeanor convictions committed in the United States.

A. Convictions

We first consider whether the Applicant has been "convicted" of the two charges discussed above. The Applicant indicates that his first offense did not result in a conviction under the Act because he participated in the diversion program for DUII and the court dismissed the charge. The Applicant concedes that his second offense is a conviction under the Act.

We find that the first arrest resulted in a conviction for immigration purposes. As stated above, among other possibilities, a conviction exists where an individual has entered a plea of guilty and the judge has ordered some form of punishment, penalty, or restraint on the foreign national's liberty. Section 101(a)(48)(A) of the Act. In the [REDACTED] 2014 DUII offense, according to the court documents, the court accepted the Applicant's guilty plea and allowed him to participate in the diversion program. This program required the Applicant to attend a victim impact panel, pay fees to the court, and install an ignition interlock device on his vehicle on his vehicle during the diversion program period. After the diversion program was completed the court dismissed the DUII charge with prejudice. Where a foreign national pleads guilty, but entry of the judgment is deferred by the

court to allow for a period of probation and/or completion of a diversion program, the foreign national has been convicted for immigration purposes even if the charges are later dismissed. See *Matter of Marroquin-Garcia*, 23 I&N Dec. 705, 714-15 (A.G. 2005); *Matter of Roldan-Santoyo*, 22 I&N Dec. 512 (BIA 1999). Here, the Applicant entered a guilty plea, the court ordered the Applicant to complete a diversion program, and the Applicant's DUII charge was subsequently dismissed with prejudice. Therefore, this qualifies as a conviction for immigration purposes.

For the second offense, the Applicant concedes in his brief that the offense is a conviction for immigration purposes. We agree. The Applicant entered a guilty plea, the court entered a formal judgment of guilt, and the court ordered a punishment or penalty in the form of 18 months of probation, and payment of fines.

As such, we find that the Applicant has two convictions as defined by section 101(a)(48) of the Act.

B. Misdemeanors

The Director determined that the Applicant was ineligible for TPS under section 244(c)(2)(B)(i) of the Act because he was convicted of two or more misdemeanors.

Again, a misdemeanor is defined in 8 C.F.R. § 244.1 as a crime punishable by imprisonment for a term of 1 year or less, regardless of the term actually served, if any, except when the maximum term of imprisonment does not exceed 5 days.

As discussed above, the Applicant has a 2014 conviction for a DUII offense in violation of § 813.010 of the Oregon Revised Statutes. Oregon law indicates that, "the offense described in this section, driving while under the influence of intoxicants, is a Class A misdemeanor." Or. Rev. Stat. § 813.010(4). An individual found guilty of a Class A misdemeanor shall be imprisoned for a maximum of 1 year. Or. Rev. Stat. § 161.615 (2014). Although the Applicant was entered into a diversion program, the maximum sentence for a DUII offense was 1 year or less, but more than 5 days; thus meeting the misdemeanor definition under 8 C.F.R. § 244.1. Therefore, the Applicant's 2014 DUII conviction qualifies as a misdemeanor for immigration purposes.

Next, the Applicant has a conviction for driving while privileges suspended or revoked in violation of § 811.182(4) of the Oregon Revised Statutes. The Applicant's driving while privileges suspended or revoked conviction is considered a Class A misdemeanor under § 811.182(4) of the Oregon Revised Statutes. Again, an individual found guilty of a Class A misdemeanor may be imprisoned for a maximum of 1 year. Or. Rev. Stat. § 161.615 (2014). Here, the maximum sentence was 1 year or less, but more than 5 days; thus meeting the misdemeanor definition under 8 C.F.R. § 244.1. Thus, the Applicant's 2014 driving while privileges suspended or revoked qualifies as a misdemeanor for immigration purposes.

Therefore, we affirm that the Applicant has two misdemeanor convictions, which render him ineligible for TPS.

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 R-A-L-G-*, ID# 10618 (AAO Sept. 30, 2016)