



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

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

In Re: 15898135

Date: OCT. 07, 2021

Appeal of California Service Center Decision

Form I-821, Application for Temporary Protected Status

The Applicant seeks Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a.

An individual is not eligible for TPS if he or she has been convicted of any felony or two or more misdemeanors committed in the United States. Section 244(c)(2)(B) of the Act. Department of Homeland Security regulations define felony as a crime “punishable by imprisonment for a term of more than one year, regardless of the term actually served,” except for an offense defined by the State as a misdemeanor where the sentence imposed is one year or less regardless of the term served, which is treated as a misdemeanor. 8 C.F.R. § 244.1.

Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), provides two definitions of conviction. First, a conviction means a formal judgment of guilt entered by a court. Second, if adjudication of guilt has been withheld, a conviction exists for immigration purposes where a judge or jury has found the foreign national guilty or the foreign national has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and the judge has ordered some form of punishment, penalty, or restraint on the foreign national’s liberty.

The Director of the California Service Center denied the re-registration request and withdrew TPS, concluding that the Applicant was not eligible for TPS because he had been convicted of a felony, specifically, possession of an identification document with the intent to defraud the U.S. government under 18 U.S.C. section 1028(a)(4).

On appeal, the Applicant states that his conviction is not for a felony, but for a misdemeanor as stated on court records. In addition, he asserts that the court records indicate the maximum penalty for his offense is one year in prison.

A criminal indictment from the United States District Court, Southern District of Florida, shows the Applicant was charged with a misdemeanor for violating 18 U.S.C. section 1028(a)(4), and this indictment states the offense has a maximum penalty of one year in prison. The judgment in the Applicant’s case states that in 2018 he pled guilty to this offense and was sentenced to time served and a \$25 fine.

Because the Applicant pled guilty to the offense and was punished, the court convicted him under Section 101(a)(48)(A) of the Act. However, we disagree with the Director's determination that his conviction was a felony. Not only do the conviction documents for the Applicant's offense show his crime was classified as a misdemeanor, carrying a maximum penalty of one year in prison, the statute also reflects this maximum sentencing. 18 U.S.C. section 1028(b)(1)-(6) delineates a five-level system of punishment for an offense under 18 U.S.C. section 1028(a), with the Applicant's offense of possession of an identification document with intent to defraud the U.S. government falling into the punishment described at 18 U.S.C. section 1028(b)(6), which includes a fine under this title or imprisonment for not more than one year, or both. Thus, because the Applicant's offense is not punishable for more than one year, it is not a felony and does not render him ineligible for TPS. Furthermore, although this conviction appears to be a misdemeanor for TPS purposes, it alone does not render the Applicant ineligible under section 244(c)(2)(B) of the Act because to be ineligible under this section of the Act for misdemeanor crimes, an applicant must be convicted of two or more misdemeanors.

Therefore, we find the Applicant has overcome the reason for his denial in showing he is not ineligible on criminal grounds. However, we will remand the matter to the Director to determine if all other eligibility grounds for TPS have been met, including whether the Applicant is admissible as an immigrant and, if applicable, is eligible to file a Form I-601, Waiver of Grounds of Inadmissibility in the TPS context.¹

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

¹ Our record shows the Applicant filed a Form I-601 with the Oakland Park, Florida field office, to overcome a material misrepresentation, an inadmissibility that had not been explicitly found by the Service Center because they found the Applicant ineligible for TPS on criminal grounds and, given this finding, it served no purpose to make a determination on admissibility. The Director denied the waiver stating there was no underlying application to support it. In a subsequent appeal, we remanded the waiver stating that if the Applicant is found inadmissible for a waivable ground, then his waiver application should be reopened and adjudicated on the merits. Notably, the Applicant may be inadmissible for a material misrepresentation given his attempted entry into the United States with a fraudulent travel document.