



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

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

In Re: 22700174

Date: SEPT. 21, 2022

Appeal of Vermont Service Center Decision

Form I-821, Application for Temporary Protected Status

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

The Director of the Vermont Service Center withdrew TPS and denied the Applicant's request for extension of TPS benefits,¹ concluding that the Applicant did not adequately respond to the notice of intent to deny asking him to submit a final disposition of his 2016 arrest and the resulting charge of theft of property in the third degree.

On appeal, the Applicant submits additional court documents and asserts that the criminal charge against him was dismissed without admission of guilt, and he was never convicted of any offense in the United States.

The burden of proof in these proceedings rests solely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we conclude that the Applicant has overcome the sole reason for the withdrawal of his TPS. We will therefore remand the matter to the Director to determine whether the Applicant is otherwise qualified for extension of TPS benefits.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) may withdraw TPS if the individual was not in fact eligible at the time TPS was granted or later becomes ineligible. 8 C.F.R. § 244.14(a)(1).

An individual is ineligible 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)(i) of the Act.

¹ Applicants whose TPS has been enjoined from termination do not currently have to re-register or renew their employment authorization. They retain TPS and authorization to work while the injunctions and other court orders are in place. *See, e.g., Continuation of Documentation for Beneficiaries of Temporary Protected Status Designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal*, 86 Fed. Reg. 50725 (Sept. 10, 2021), available at <https://www.federalregister.gov/documents/2021/09/10/2021-19617/continuation-of-documentation-for-beneficiaries-of-temporary-protected-status-designations-for-el>

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 individual guilty or the individual 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 individual's liberty.

Applicants must demonstrate eligibility by a preponderance of credible evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The sufficiency of all evidence is judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b).

II. ANALYSIS

The issue on appeal is whether the Applicant has established that he is not barred from TPS on criminal grounds.

The record reflects that in [REDACTED] 2016, the Applicant was arrested in Alabama and charged with theft of property in the third degree in violation of section 13A-8-4.1 of the Alabama Code, a class D felony. The Director issued an intent to deny (ITD) asking the Applicant to submit a final disposition for this arrest. The Director acknowledged that the Applicant provided certain court documents when he previously re-registered for TPS in 2018, but that they did not address this particular charge or the reason it was ultimately dismissed. In response to the ITD the Applicant submitted an order of the District Court of [REDACTED] Alabama (district court) dated in [REDACTED] 2017, stating that the case was "dismissed upon payment in full." In addition, the Applicant provided a 2021 Georgia criminal history search record to show that he was not convicted of any offenses in Georgia, where he currently resides. Nevertheless, the Director concluded that the Applicant's response was inadequate to establish that he did not have a disqualifying criminal conviction and withdrew his TPS.

On appeal, the Applicant submits copies of his arrest warrant and the district court's order for trial, as well as case action summary printout from the Alabama State Judicial Information System. This supplemental evidence, when considered with the previously provided district court order dismissing the case, is now sufficient to show that the Applicant's 2016 arrest did not result in a conviction for immigration purposes.

Specifically, the arrest warrant reflects that the Applicant was charged with theft of property in the fourth degree, in violation of section 13A-8-5 of the Alabama Code, a class A misdemeanor. Class A misdemeanors are punishable under Alabama law by imprisonment in a county jail for not more than one year and/or a fine payment. Ala. Code §§ 13A-5-7 and 13A-5-12 (West 2016). The related case action summary from the Alabama State Judicial Information System further shows that the Applicant was released from jail on bond and scheduled for arraignment in [REDACTED] 2017. The related [REDACTED] 2017 district court's order reflects that the Applicant entered a plea of "not guilty" at the arraignment was scheduled for trial in for [REDACTED] 2017. The case detail summary in turn indicates that in [REDACTED] 2017 the case was continued by agreement, and the district court ultimately dismissed the charge against the Applicant in [REDACTED] 2017.

As stated, a conviction for immigration purposes occurs in relevant part when an individual 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 individual's liberty. Here, the record reflects that the Applicant pled "not guilty" to the charge, and there is nothing in the district court orders to indicate that the Applicant admitted sufficient facts to warrant a finding of guilt, or that the judge found him guilty of the offense.

The Applicant therefore has met his burden of proof to show that he was not "convicted" within the meaning of section 101(a)(48)(A) of the Act of the misdemeanor theft of property charge as a result of his 2016 arrest. The record before us does not reveal any additional criminal history. Consequently, as the preponderance of the evidence indicates that the Applicant has not been convicted of any felony or two or more misdemeanor offenses committed in the United States, we conclude that he is not subject to the criminal grounds of ineligibility for TPS under section 244(c)(2)(B)(i) of the Act.

We will therefore return the matter to the Director for adjudication of the Applicant's request for extension of TPS benefits.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.