



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

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

In Re: 28999310

Date: NOV. 13, 2023

Appeal of California Service Center Decision

Form I-821, Application for Temporary Protected Status

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

The Director of the California Service Center withdrew TPS, concluding that the Applicant was ineligible for such status because he was convicted of two or more misdemeanor offenses committed in the United States.

On appeal, the Applicant asserts that the withdrawal was in error because he had been already punished for the offenses, and U.S. Citizenship and Immigration Services (USCIS) waived the convictions in 2012, when it granted his initial TPS request.

Once a noncitizen has been granted TPS, USCIS has the burden to show why TPS should be withdrawn. *See generally* 8 C.F.R. § 244.14. We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we conclude that USCIS has met this burden. Accordingly, we will dismiss the appeal.

I. LAW

USCIS may withdraw the status of a noncitizen granted TPS under section 244 of the Act at any time if it is determined that the noncitizen was not in fact eligible for such status at the time it was granted, or thereafter becomes ineligible. 8 C.F.R. § 244.14(a)(1). A noncitizen is ineligible for TPS if they have been convicted of any felony or two or more misdemeanors committed in the United States. Section 244(c)(2)(B) of the Act.

For TPS purposes, “misdemeanor” means any crime punishable by imprisonment for a term of one year or less, regardless of the term actually served if any, except when the maximum possible term of imprisonment for the crime does not exceed five days. 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 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.

In addition, a noncitizen is ineligible for TPS if they are inadmissible to the United States as an immigrant. Section 244(c)(1)(A)(iii) of the Act. Any noncitizen who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under the Act is inadmissible. Section 212(a)(6)(C)(i) of the Act. TPS applicants who are inadmissible for fraud or misrepresentation may seek a waiver under section 244(c)(2) of the Act.

II. ANALYSIS

The issue on appeal is whether the Applicant is ineligible for TPS on criminal grounds.

The Applicant's criminal history record reflects that in [] 2001 he was arrested and charged with domestic battery in violation of Florida Statutes Annotated (Fla. Stat. Ann.) § 784.03(1)(a). In [] 2001 he pled guilty to this offense. The court adjudicated the Applicant guilty and sentenced him to probation for 12 months. In [] 2001, the Applicant was again arrested and charged with domestic battery in violation of Fla. Stat. Ann. § 784.03(1)(a). He again pled guilty and was adjudicated guilty by the court. The court sentenced the Applicant in part, to complete a 12-month probationary period (to run concurrently with the probationary period imposed in the first case) and community service.

Battery in violation of Fla. Stat. Ann. 784.03(1)(a) is a misdemeanor of the first degree, punishable by "a definite term of imprisonment not exceeding 1 year" Fla. Stat. Ann. §§ 784.03(1)(b) and 775.082(4)(a). Because the maximum penalty possible for domestic battery under Florida law is imprisonment for more than five days but "one year or less," the offense qualifies as a misdemeanor for TPS purposes.

Although the Applicant's criminal history record shows that he was convicted of two such offenses, the Applicant represented on the instant Form I-821 that he had never been convicted, fined, imprisoned, or placed on probation for breaking or violating any law or ordinance, excluding minor traffic violations. The Director therefore issued a notice of intent to deny (NOID) to give the Applicant an opportunity to submit additional information, evidence, or arguments to establish that the above two convictions did not bar him from receiving TPS. The Director also advised the Applicant that there was no waiver available for noncitizens who were convicted of two or more misdemeanor offenses committed in the United States.

In response, the Applicant stated that he had previously submitted such evidence, and that because he was previously granted a waiver he "was already forgiven in this matter." In support, he provided copies of TPS and Form I-601, Application for Waiver of Grounds of Inadmissibility approval notices dated in 2012, and other TPS-related documents. The Director found this response inadequate to establish that the Applicant was not subject to the criminal grounds of ineligibility for TPS and withdrew the prior TPS grant.

On appeal, the Applicant reiterates that he was granted a waiver and, as he has not been convicted of any other offenses since the initial TPS grant, his TPS should not have been withdrawn.

We acknowledge the Applicant's statements on appeal; however, they are not sufficient to overcome the basis for the withdrawal of his TPS. As stated, USCIS may withdraw TPS at any time upon determination that the TPS recipient was not in fact eligible for such status at the time it was granted.

Here, the record reflects, and the Applicant does not dispute that he had been convicted of at least two misdemeanor offenses when his initial TPS request was granted in 2012.¹ Although USCIS approved his waiver application at the same time, the approval served only to waive his inadmissibility under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation; specifically, for seeking admission to the United States by fraud or misrepresentation of material facts.²

Pursuant to section 244(c)(2) of the Act this and certain other *inadmissibility* grounds may be waived for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. However, there is no waiver or exception available to noncitizens who are statutorily *ineligible* for TPS on criminal grounds in section 244(c)(2)(B) of the Act, which include having been convicted of two or more misdemeanor offenses committed in the United States.

The record shows that the Applicant was convicted of two such offenses in 2001. As such, he was statutorily ineligible for TPS at the time he was granted such status in 2012, and his TPS was therefore properly withdrawn on that basis.

ORDER: The appeal is dismissed.

¹ We note that the Applicant denied having ever been arrested on his initial and all subsequent TPS requests, including the instant TPS application.

² The Applicant filed the Form I-601 in 2012 indicating that he was seeking a waiver for "seeking admission to the United States by fraud or willful misrepresentation of material facts." The record reflects that in May 1993 the Applicant attempted to enter the United States with a Haitian passport and U.S. visa issued to someone else. He was subsequently charged with inadmissibility under section 212(a)(6)(C)(i) of the Act and placed in removal proceedings. Because the Applicant failed to appear for a scheduled removal hearing in 2009, he was ordered removed from the United States in absentia.