



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

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

In Re: 20813379

Date: APR. 27, 2022

Appeal of California Service Center Decision

Application: 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.

The Director of the California Service Center concluded that the Applicant was ineligible for TPS because he had been convicted of at least two misdemeanors committed in the United States, listing eight convictions as the basis for this finding.¹

On appeal, the Applicant does not contest that he has a criminal record which includes at least two misdemeanor convictions, but states that we should reconsider applying this eligibility criteria so strictly because he was granted TPS in the past, even with these convictions on his record. He adds that most of his convictions were the result of him not having an immigration status in the United States and thus not being able to obtain a driver's license.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

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) of the Act. The Department of Homeland Security (DHS) regulation defines a misdemeanor as a crime “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.” 8 C.F.R. § 244.1. Furthermore, “any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a felony or misdemeanor.” *Id.*

¹ The Director's decision reports the Applicant as having four convictions for an Expired Driver's License (more than four months) under Florida Statutes section 322.03(5); three convictions for Operating a Motor Vehicle Without a Valid Driver's License under Florida Statutes section 322.03(1); and one conviction for Solicitation to Commit Prostitution under Florida Statutes section 796.07.

Section 101(a)(48)(A) of the Act 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.

II. ANALYSIS

The issue on appeal is whether the Director properly found the Applicant had been convicted of two misdemeanors and was therefore ineligible for TPS.

A. Solicitation of Prostitution

A 2013 criminal judgment shows the Applicant pled no contest to solicitation of prostitution under Florida Statutes section 796.07. The court then sentenced him to nine days in jail, \$823 in fines, 90 days probation, and 25 hours of community service. Because the Applicant pled no contest and the court punished him for his actions, he was convicted as it is defined under the Act. In addition, this crime was classified as a second-degree misdemeanor, punishable under section 775.082 of the Florida Statutes, which indicates the maximum sentence for a second-degree misdemeanor is 60 days imprisonment. This maximum sentence is more than 5 days but not more than 1 year, and thus, the offense meets the TPS definition of a misdemeanor.

B. Operating a Motor Vehicle Without a Valid Driver's License

A 2007 criminal judgment shows the Applicant pled no contest to operating a motor vehicle without a valid driver's license under Florida Statutes section 322.03(1). The court then sentenced him to one day in jail and \$225 in fines. Because the Applicant pled no contest and the court punished him for his actions, he was convicted as it is defined under the Act. In addition, as stated on his court records, this crime was classified as a second-degree misdemeanor, which is punishable under section 775.082 of the Florida Statutes, indicating the maximum sentence for a second-degree misdemeanor is 60 days imprisonment. Like above, this maximum sentence is more than 5 days but not more than 1 year, and thus, the offense meets the TPS definition of a misdemeanor.

Therefore, the Applicant is not eligible for TPS because he has two misdemeanor convictions committed in the United States.² Notably, to address the Applicant's request on appeal, there is no discretionary basis for applying this eligibility criteria in a less strict manner. The burden of proof in these proceedings rests solely with the Applicant. Section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met his burden. The Director's decision is affirmed.

ORDER: The appeal is dismissed.

² Because we have identified two of the Applicant's convictions as meeting the TPS definition of a misdemeanor, we need not review whether his other six convictions would also meet this definition.