



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

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

In Re: 27527816

Date: AUG. 2, 2023

Motion on Administrative Appeals Office Decision

Form I-821, Application for Temporary Protected Status

The Applicant, a national of El Salvador, 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 denied the Applicant's TPS re-registration request and withdrew his status, concluding that the Applicant did not submit sufficient documentation to show that he was convicted of two or more misdemeanor offenses and, thus, that he was not barred from TPS on criminal grounds the in section 244(c)(2)(B)(i) of the Act. We dismissed the Applicant's appeal and a subsequent motion to reconsider on the same basis.

The matter is now before us on a motion to reopen. The Applicant submits additional court documents. He asserts that the criminal grounds of ineligibility for TPS do not apply because he only has one misdemeanor conviction, and his status therefore should be reinstated.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

Upon review, we conclude that the new evidence is sufficient to establish that the Applicant has only one misdemeanor conviction and is not barred from TPS on criminal grounds. We will therefore grant the motion to reopen and return the matter to the Director for further proceedings consistent with our opinion below.

The record reflects, in relevant part, that in 2002 the Applicant was arrested in North Carolina on two separate occasions and charged with two misdemeanor offenses—driving while impaired (DWI), and making a false report to a police station (false report). There is no dispute that the misdemeanor DWI charge resulted in a conviction.¹

¹ The record reflects that the Applicant pled guilty to the offense; the court found him guilty and sentenced him, in part, to 60 days of jail time and probation for 12 months. See section 101(a)(48)(A) of the Act (defining a “conviction” for immigration purposes in relevant part as “a formal judgment of guilt entered by a court or, if adjudication of guilt has been withheld, where . . . the [individual] has entered a plea of guilty . . . and . . . the judge has ordered some form of punishment, penalty, or restraint on the [individual]’s liberty to be imposed.”).

In our prior decision, which we incorporate here by reference, we concluded that the certified court disposition concerning the misdemeanor false report charge was insufficient to support the Applicant's claim that he was not convicted of this offense for immigration purposes, as it showed only that the charge was "disposed" of in September 2002 after he "complied with deferral"; it did not include information about the deferral process under North Carolina law, and it did not indicate whether he entered a plea and if or how he was punished. Thus, we determined that the Applicant did not meet his burden of proof to demonstrate that he did not have a second misdemeanor conviction and remained eligible for TPS.

To overcome this determination, the Applicant now submits a copy of his motion and order for appropriate relief,² both dated on February 21, 2021, and a certified court disposition showing voluntary dismissal of the case on the same day. The court order reflects that a district court judge granted the Applicant's motion for appropriate relief, finding that the conviction was unconstitutional³ because the Applicant was unaware that the deferral dismissal of the false report charge would count as a conviction for immigration purposes. The judge set aside the September 2002 judgement concerning the charge and ordered a voluntary dismissal to be entered in the case. The charges were dismissed by the district attorney on the same day. Because the prior judgment in the matter was set aside as unconstitutional, and the court voluntarily dismissed the underlying false report charge, the Applicant has shown he is no longer "convicted" of that offense the purposes of TPS eligibility. *See Matter of Thomas and Matter of Thompson*, 27 I&N Dec. 674, 680 (A.G. 2019) (holding that state court orders that modify, clarify, or otherwise alter a sentence will be given effect for immigration purposes only if based on a procedural or substantive defect in the underlying criminal proceeding).

In view of the above, we conclude that the Applicant has met his burden of proof to show that he has been convicted of only one misdemeanor offense committed in the United States. As such, he is not barred from TPS on criminal grounds, and his TPS is reinstated.

We will therefore remand the matter to the Director to adjudicate the Applicant's 2018 re-registration request on the merits. Given the passage of time since the filing, the Director may ask the Applicant to provide any additional evidence deemed necessary to process his Form I-821.

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

² See North Carolina General Statutes Annotated (N.C. Gen. Stat. Ann.) § 15A-1411 (providing that an individual may seek relief from errors committed in the trial division, or other post-trial relief, by filing a motion for appropriate relief).

³ See N.C. Gen. Stat. Ann. § 15A-1415(b) (providing that if a motion for appropriate relief is made more than 10 days after the entry of judgment, the defendant may only assert certain specific grounds, including that the conviction was obtained in violation of the Constitution of the United States or the Constitution of North Carolina). *See also, State v. Harwood*, 746 S.E.2d 445, 449 (N.C. Ct. App. 2013) (explaining that a motion for appropriate relief made more than 10 days after the entry of a challenged judgment is intended to provide a vehicle for the identification of those errors in a trial which are so basic that one should be able to go back into the courts at any time, even many years after conviction, and seek relief, and is not intended to serve as an alternative to review on direct appeal).