U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26143425

Date: FEB. 8, 2023

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 denied the Applicant's TPS re-registration request and withdrew his status concluding that the Applicant failed to establish he was not convicted of two or more misdemeanor offenses committed in the United States. The Director also dismissed a subsequent motion to reopen and reconsider the adverse decision on the same basis. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant asserts that the previously submitted evidence, which included the court letter dated in July 2012 shows that the charges against him "have been dealt with " and are no longer an issue.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). 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 will dismiss the appeal.

I. LAW

U.S. Citizenship and Immigration Services (USCIS) may withdraw TPS if the recipient was not in fact eligible at the time they were granted such status or later becomes ineligible. 8 C.F.R. § 244.14(a)(1). Individuals who were convicted of two or more misdemeanors committed in the United States are ineligible for TPS. Section 244(c)(2)(B)(i) of the Act.

For TPS purposes, any crime punishable by imprisonment for a term of one year or less, regardless of the term actually served if any, is considered a misdemeanor except when the maximum possible term of imprisonment for the crime does not exceed five days. 8 C.F.R. § 244.1.

A conviction exists for immigration purposes where a court has entered a formal judgment of guilt or, if adjudication of guilt has been withheld, 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. Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A).

II. ANALYSIS

The only issue on appeal is whether the Applicant has met his burden of proof to establish that he was not convicted of two or more misdemeanor offenses. We have reviewed the entire record and conclude that he has not.

The record reflects that in 2009 the Applicant was arrested and charged with theft in violation of section 483(a) of the California Penal Code. In 2011 he was again arrested and charged with two offenses: (1) driving under the influence of an alcoholic beverage in violation of section 23152(a) of the California Vehicle Code, and (2) driving while having a blood alcohol concentration of 0.08 percent or more in violation of section 23152(b) of the California Vehicle Code.[1]

In a notice of intent to deny, the Director requested the Applicant to provide court dispositions for the above arrests, including the information about the classification of the offenses under state law, the pleas he entered to each offense, and the penalties imposed by the court. In response, the Applicant submitted a certified court record reflecting that the theft offense was charged as an infraction, and that he pleaded guilty to the offense and was ordered to pay a fine. The Director found this evidence sufficient to show that the offense was not a misdemeanor for TPS purposes. Nevertheless, the Director determined that the remaining documentation, which consisted of a 2011 police booking report, notice to appear in court, and a 2012 court records search certificate, was not adequate to show that the Applicant was not convicted of disqualifying offenses as a result of his second arrest. The Applicant has not overcome this determination on appeal.

The Applicant does not submit any new evidence, but asserts that the previously provided documents establish that the 2011 charges "are no longer an issue." He explains that after the arrest he was transferred to a police station where he was booked and detained, but when he called the police department they told him they had no record "of [him] being there." The Applicant further states that the court search certificate also shows that no record was found for him in the court's indexes.

We agree with the Director that this documentation is not sufficient to show the final disposition of the 2011 charges. The notice to appear issued to the Applicant at the time of his arrest only shows that he was to appear in court, but it does not contain information about the outcome. The Applicant does not explain if and when he went to court, nor does he submit evidence of the final disposition of the two charges against him. We acknowledge that the court certification letter does not indicate a felony/misdemeanor "record" for the Applicant; however, this is not sufficient to establish that the Applicant was not convicted for immigration purposes..[2] Specifically, if an individual pleads guilty or *nolo contendere*, or is found guilty but the court defers entry of the judgment to allow the individual to complete a period of probation or a diversion program, the individual has been "convicted" within

[1] There is no dispute that both offenses are considered "misdemeanors" defined in 8 C.F.R. § 244.1, as both are punishable by imprisonment in the county jail for up to 6 months. Cal. Veh. Code § 23536.

[2] *See Instructions for Form I-821*, 12 https://www.uscis.gov/i-821 (providing in relevant part that applicants must submit disposition documentation for all charges even if someone, including a judge, law enforcement officer, or attorney told them that they no longer have a record).

the meaning of section 101(a)(48) of the Act. *See e.g.*, *Matter of Mohamed*, 27 I&N Dec. 92, 98 (BIA 2017) (holding that entry into a pretrial intervention agreement qualified as a "conviction" for immigration purposes under section 101(a)(48)(A) of the Act, where an individual admitted sufficient facts to warrant a finding of guilt, and the judge authorized the agreement ordering the individual to participate in the pretrial intervention program). On the other hand, if the charges are dismissed following successful completion of a pretrial diversion program which occurred prior to a pleading or finding of guilt, the individual is not considered convicted for immigration purposes. *Matter of Grullon*, 20 I&N Dec. 12, 14-15 (BIA 1989) (citing *Matter of Ozkok*, 19 I&N Dec. 546 (BIA 1988)).

Here, the Applicant's evidence does not show if and when he appeared in court as required in the notice to appear, how he pleaded to the charges, and if and how he was punished. Given these deficiencies, the record remains insufficient to establish that the Applicant was not convicted of two or more misdemeanor offenses in the United States.

Consequently, the Applicant has not met his burden of proof to show that he is not barred from TPS on criminal grounds. As such, he has not overcome the basis for TPS withdrawal.

ORDER: The appeal is dismissed.