



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

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

In Re: 27229098

Date: JUNE 12, 2023

Motion on Administrative Appeals Office Decision

Form I-821, Application for Temporary Protected Status

The Applicant seeks review of a decision withdrawing her 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 the Applicant's TPS concluding that she was no longer eligible for such status because she was convicted of two or more misdemeanor offenses committed in the United States, and we dismissed her appeal on the same grounds. The matter is now before us on a combined motion to reopen and reconsider.

On motion, the Applicant submits additional evidence and asserts that our appellate decision was erroneous and premature.

Upon review, we will dismiss the motion to reopen and reconsider.

A motion to reopen is based on documentary evidence of new facts, and a motion to reconsider must establish that our decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services' (USCIS) policy to the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(2)-(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

As previously discussed, U.S. Citizenship and Immigration Services (USCIS) may withdraw TPS at any time if the recipient becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1). Individuals who were convicted of two or more misdemeanor offenses committed in the United States are ineligible for TPS. Section 244(c)(2)(B)(i) of the Act. Lastly, 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 for TPS purposes except when the maximum possible term of imprisonment for the crime does not exceed five days. 8 C.F.R. § 244.1.

We incorporate our prior decision here by reference, and will only repeat certain facts as necessary to address the Applicant's arguments on motion. The record reflects that from 2019 through 2021 the Applicant was convicted of five offenses for which the maximum penalty possible under Virginia law included confinement in jail for not more than either 6 or 12 months, and were therefore considered

misdemeanors. In dismissing the Applicant's appeal, we acknowledged her assertion that the convictions were related to traffic offenses, and that according to Form I-821 instructions traffic offenses generally are not disqualifying for TPS purposes. We explained, however, that the Applicant misinterpreted the Form I-821 instructions, which provide that dispositions of arrests for traffic offenses are required so that USCIS can assess if they affect TPS eligibility. We further explained that in determining whether an offense is a misdemeanor for TPS purposes we look at how the state chooses to punish that particular offense (regardless of its category), and that the offenses of which the Applicant was convicted qualified as misdemeanors based on the maximum penalty possible under Virginia law. Lastly, while the Applicant indicated she filed a petition for writ of habeas corpus, we concluded that absent evidence that a state court overturned the convictions for procedural or substantive defects, she remained convicted of two or more misdemeanor offenses, and as such was ineligible for TPS.

The Applicant now submits a copy of a 2023 Virginia circuit court order granting her leave to file an amended petition for writ of habeas corpus. She asserts that we dismissed her appeal prematurely, as the petition to vacate four of the five convictions was pending before the court at the time and her request for withholding a decision on her appeal until the court ruled on that petition was appropriate because she was convicted due to ineffective assistance of counsel. However, the Applicant does not point to any legal authority or policy guidance which would allow us to hold adjudication of her appeal in abeyance until such time that she may again establish eligibility for TPS.<sup>1</sup> Furthermore, as she still does not submit evidence that the court vacated the convictions on procedural or substantive grounds we cannot conclude that the basis for the withdrawal of her TPS has been overcome. Collateral attacks upon an applicant's conviction "do not operate to negate the finality of [the] conviction unless and until the conviction is overturned." *Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996).

Thus, while we acknowledge that the Applicant is seeking to have her misdemeanor convictions vacated, the filing of the writ of habeas corpus petition alone is not sufficient to establish that she is no longer barred from TPS on criminal grounds, or that her TPS proceedings should otherwise be held in abeyance pending the court's ruling. The Applicant therefore has not established new facts sufficient to reopen these proceedings and to issue a new decision concerning her eligibility for TPS.

The Applicant also has not shown that we erred as a matter of law or USCIS policy in dismissing her appeal for the reasons discussed above. She opines, without citing any legal support that the instructions for Form I-821 require applicants to submit dispositions for traffic offenses so USCIS can assess whether the convictions relate to their "TPS eligibility," and not to their "continuing eligibility" for TPS or TPS "withdrawal," and argues that we therefore erroneously linked *TPS withdrawal* with *TPS ineligibility*. This argument is unavailing, however, as the regulations at 8 C.F.R. § 244.14(a)(1) clearly state that USCIS may *withdraw* TPS at any time if the recipient becomes *ineligible* for such status. As previously discussed, the Applicant became *ineligible* for TPS once she was convicted of two or more misdemeanor offenses, and USCIS therefore properly *withdrew* her TPS on that basis.

In conclusion, the Applicant has not established new facts sufficient to warrant reopening of the instant proceedings, nor has she demonstrated that our prior decision was based on an incorrect application

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<sup>1</sup> We note that every applicant must establish eligibility for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b).

of law or policy or that it was otherwise incorrect based on the evidence in the record of proceedings at the time we dismissed her appeal. Consequently, the Applicant has not established a basis for us to reopen and reconsider our prior decision. Her appeal remains dismissed, and her TPS remains withdrawn.

**ORDER:** The motion to reopen is dismissed.

**FURTHER ORDER:** The motion to reconsider is dismissed.