



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

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

In Re: 24706241

Date: MARCH 1, 2023

Appeal of California Service Center Decision

Form I-821, Application for Temporary Protected Status

The Applicant, a national of Haiti 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 denied the TPS request, concluding that the Applicant did not submit sufficient evidence to establish he was not convicted of two or more misdemeanor offenses committed in the United States. The matter is now before us on appeal. 8 C.F.R. § 103.3.

On appeal, the Applicant submits additional evidence and reasserts eligibility.

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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

## I. LAW

Noncitizens 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.

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).

TPS applicants must submit all documentation as required in the instructions or requested by U.S. Citizenship and Immigration Services. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). To meet the burden of proof, applicants must provide supporting documentary evidence of eligibility apart from their own statements. *Id.*

## II. ANALYSIS

The only issue on appeal is whether the Applicant has met his burden of proof to establish that he does not have disqualifying criminal convictions for TPS purposes.

The Director previously issued a request for evidence (RFE) advising the Applicant that his fingerprint record revealed arrests and charges for misdemeanor offenses; specifically:

1. In 2017 the Applicant was arrested and charged with two offenses: menacing in the second degree by displaying a deadly weapon (menacing) in violation of section 120.14.1 of the New York Penal Law, and criminal possession of a weapon in the fourth degree (possession of a weapon) in violation of section 265.01 of the New York Penal Law.
2. In 2019, the Applicant was arrested and charged with driving or attempting to drive a motor vehicle without a license (DWL) in violation of section 16-101(a)(1) of the Maryland Transportation Code.

The Director instructed the Applicant to submit documentation of the final dispositions of all charges. The Applicant timely responded to the RFE, but the Director found the response incomplete and denied the TPS request, concluding that the Applicant did not comply with the RFE instructions.

To overcome this determination, the Applicant submits additional evidence concerning his arrests.<sup>1</sup> We have reviewed the record as supplemented on appeal, and conclude that it is now sufficient to show that the Applicant has not been convicted of two or more misdemeanor offenses committed in the United States.

The additional evidence includes letters from the Office of the District Attorney for the [REDACTED] New York, stating that the District Attorney's Office declined prosecution of the charges stemming from the Applicant's 2017 arrest because the complaining witness (the Applicant's brother) declined to prosecute. The letters establish that the charges were not prosecuted, and therefore neither misdemeanor charge resulted in a conviction. The record also contains a previously submitted July 2022 Defendant Trial Summary document concerning the 2019 DWL charge, which reflects that it was Nolle Prosequi. The court case summary concerning this charge the Applicant submits on appeal

---

<sup>1</sup> The Applicant does not contest the Director's determination that the offenses for which he was arrested qualify as misdemeanors for TPS purposes. Specifically, the maximum possible penalty for a first DWL offense includes imprisonment not exceeding 60 days. *See* Md. Code Ann., Transp. § 16-101(c) (West). Both possession of a weapon and menacing are class A misdemeanors punishable in part by a term of imprisonment not exceeding 364 days. *See* N.Y. Penal Law §§ 265.01, 120.14, and 70.15.1 (McKinney). The charged offenses therefore meet the definition of a "misdemeanor" in 8 C.F.R. § 244.1.

confirms that the charge was not prosecuted, and that the Applicant was therefore not convicted of the DWL offense.<sup>2</sup>

In conclusion, the Applicant has met his burden of proof to demonstrate that he was not convicted of two or more misdemeanor offenses in the United States. He therefore has overcome the sole basis for the denial of his TPS request. Accordingly, we will return the matter to the Director to determine whether the Applicant meets the remaining eligibility criteria for TPS.

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

---

<sup>2</sup> We note that both documents reflect that the Applicant was also charged with exceeding posted speed limit in violation of section 21-801.1 of the Maryland Transportation Code; he pled guilty to this offense and was granted probation before judgment. We need not determine whether this qualifies as a conviction for immigration purposes, because the maximum penalty for the offense is a fine not exceeding \$500. *See* Md. Code Ann., Transp. § 27-101 (West). As such, the offense does not meet the definition of a "misdemeanor" in 8 C.F.R. § 244.1 and does not affect the Applicant's eligibility for TPS.