



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

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

In Re: 22874757

Date: NOV. 7, 2022

Motion on Administrative Appeal 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 TPS, concluding that the Applicant did not adequately respond to a notice of intent to deny asking him to submit evidence of the final dispositions for all of his arrests, and that he therefore did not register for TPS in the form or manner specified by U.S. Citizenship and Immigration Services (USCIS). We dismissed the Applicant's subsequent appeal and two motions to reopen and reconsider, as the record reflected that the Applicant was convicted of Driving Under the Influence (DUI) in 2006 and the documents he submitted were insufficient to show that he was not convicted of other disqualifying offenses as a result of his 2015 arrest.

The matter is now before us on a third motion to reopen. With this motion, the Applicant submits new evidence and asserts that he remains eligible for TPS because the charge resulting his 2015 arrest was dismissed.

Upon review, we will grant the motion to reopen. Moreover, we conclude that the Applicant has overcome the sole reason for the withdrawal of his TPS. Accordingly, we will remand the matter for the Director to determine whether the Applicant continues to be otherwise eligible for TPS.

I. LAW

A motion to reopen is based on documentary evidence of new facts. 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.

As previously discussed, 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. Applicants have the burden of showing eligibility for TPS. 8 CFR § 244.9(a)(3). To meet this burden,

they must provide supporting documentary evidence of eligibility apart from their own statements. 8 CFR § 244.9(b).

Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), 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 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.

II. ANALYSIS

The record reflects that in 2006 the Applicant was convicted of Driving Under Influence (DUI), a misdemeanor offense, and the Applicant does not dispute the conviction. The record further shows that in 2015 the Applicant was arrested by the [] California Police Department and charged with disorderly conduct involving alcohol or drugs (disorderly conduct) in violation of section 667(f) of the California Penal Code (a misdemeanor offense), and possession of an open container with alcoholic beverage (an infraction). The Applicant submitted evidence that the 2015 arrest associated with the case number [] resulted in a charge of resisting, obstructing, or delaying a peace officer or emergency medical technician in violation of section 148(a)(1) of the California Penal Code (resisting, obstructing, or delaying a peace officer) to which he pled "not guilty," and which was dismissed in the interest of justice in [] 2016.

We concluded that this evidence was insufficient to show the final disposition of a 2015 misdemeanor disorderly conduct charge associated with a different case number, [] because the Applicant did not provide documents, such as a letter from the police department or prosecutor, to show how that charge, which appeared to be separate from the other charges, was resolved. We acknowledged the letter from the [] Police Department indicating that the case number [] did not belong to that agency; however, as the Applicant did not provide other documents, including a California criminal history search report, to show whether he was arrested and charged with disorderly conduct on more than one occasion in 2015, we determined that the record concerning his criminal history remained unclear and he did not therefore meet his burden of proof to establish that he was not convicted of a second misdemeanor offense and was not barred from TPS on criminal grounds.

In support of the instant motion to reopen, the Applicant submits a 2022 California Criminal History Information report (criminal history report), which reflects two arrests—in 2006, and in 2015. The criminal history report shows that the Applicant was arrested on only one occasion in 2015 and charged with misdemeanor disorderly conduct in violation of section 667(f) of the California Penal Code. The previously provided police report concerning this arrest indicates that the Applicant was "issued a [] Police Department citation number []" and "given the court date of [] 2016." Furthermore, the court case document (case number []), which references the same [] Police Department citation number [], indicates that the Applicant was ultimately charged with a different, single misdemeanor offense—resisting, obstructing, or delaying a peace officer in violation of section 148(a)(1) of the California Penal Code. It further shows that the Applicant appeared in [] California Superior Court on [] 2016; he pled "not guilty" to the charge, and a judge granted the District Attorney's motion to dismiss the charge in the

interest of justice. The court case document also reflects that the Applicant was “released on all counts” and his previously scheduled jury trial was cancelled. This documentation supports the Applicant’s claim that he was not convicted of any offenses as a result of his 2015 arrest.

In conclusion, the record as supplemented on motion is sufficient to show that the Applicant was arrested only once in 2015, that he pled “not guilty” to the resulting misdemeanor charge, and that it was dismissed pre-trial in the interest of justice. Consequently, the Applicant has demonstrated that he was not convicted of a second misdemeanor offense within the meaning of section 101(a)(48)(A) of the Act. As such, he has met his burden of proof to show that he is not barred from TPS on criminal grounds.

Accordingly, we withdraw the Director’s decision to the contrary, and remand the matter for the Director to determine if the Applicant continues to meet all other eligibility requirements for TPS.

ORDER: The motion to reopen is granted, and the matter is remanded for the entry of a new decision consistent with the foregoing analysis.