U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23173124

Date: NOV. 17, 2022

Motion on Administrative Appeals Office 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 was statutorily ineligible for such status due to at least two convictions for two misdemeanor offenses committed in the United States. We dismissed a subsequent appeal on the same basis.

The matter is now before us on a motion to reconsider. The Applicant submits a brief and asserts that his driving-related offenses do not constitute convictions for immigration purposes and he therefore remains eligible for TPS.

Upon review, we will dismiss the motion.

I. LAW

A motion to reconsider must establish that our decision was based on an incorrect application of the law or U.S. Citizenship and Immigration Services (USCIS) policy and that the decision was incorrect based on the evidence in the record as the time of the initial decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the immigration benefit sought. To establish eligibility for TPS, applicants must provide supporting documentary evidence apart from their own statements. 8 C.F.R. § 244.9(b).

As previously discussed, individuals who have been convicted of two or more misdemeanor offenses committed in the United States are ineligible for TPS. Section 244(c)(2)(B) of the Act.

The regulation at 8 C.F.R. § 244.1 defines a misdemeanor, in part, as a crime punishable by imprisonment for a term of one year or less, regardless of the term actually served, except for crimes which carry a maximum five-days imprisonment sentence.

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

adjudication of guilt has been withheld, where a judge or jury has found an 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 the Applicant had been arrested in Florida on multiple occasions and charged with various offenses, including driving with an expired driver's license (more than four months) in violation of section 322.03(5) of the Florida Statutes; operating a motor vehicle without a valid license in violation of section 322.03(1) of the Florida Statutes; and solicitation to commit prostitution in violation of section 796.07 of the Florida Statutes.

In our previous decision, which we incorporate here by reference, we concluded that the Applicant was convicted of solicitation of prostitution (in 2013) and operating a motor vehicle without a valid license (in 2007), because he pled no contest to those offenses and the court imposed punishment by sentencing him, in part to jail time and payment of fines. Moreover, because both offenses are classified as misdemeanors of the second degree under Florida law, punishable by up to 60 days of imprisonment[1] we determined that they met the definition of a "misdemeanor" in 8 C.F.R. § 244.1 and were disqualifying for TPS purposes. Thus, we concluded that the Applicant was statutory ineligible for TPS due to at least two misdemeanor convictions.[2]

The Applicant does not contest that his conviction for solicitation of prostitution is a misdemeanor. He asserts, however, that we erred as a matter of law in concluding that his conviction for operating a motor vehicle without a valid license also qualified as a misdemeanor conviction. He states that although he pled no contest to this offense[3] he was not afforded several constitutional protections in his proceedings before the court, and that he therefore cannot be considered "convicted" for immigration purposes pursuant to the precedent decision of the Board of Immigration Appeals (the Board) in *Matter of Eslamizar*, 23 I&N Dec. 684 (BIA 2004). We have considered the Applicants statements on motion, and conclude that they are not sufficient to overcome our determination that he is ineligible for TPS on criminal grounds.

In *Matter of Eslamizar*, the Board held that a judgment of guilt constitutes a conviction for immigration purposes only where the judgment was entered in a "genuine criminal proceeding," that is, a proceeding conducted for the purpose of determining whether the accused committed a crime and which provides the requisite constitutional safeguards. *Id.* at 688. The Board gave numerous examples of these safeguards, recognizing that "petty offenses" do not carry all of them, but finding that "each element of an offense or crime must be proved beyond a reasonable doubt" and an adjudication of guilt under a lesser standard of proof, regardless of the crime's classification, cannot fall within the meaning of a "conviction" under the Act. *Id.* at 687-688.

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[1] *See* Fla. Stat. Ann. § 775.082 (West 2007) (providing that a person convicted of a misdemeanor of the second degree may be punished by a definite term of imprisonment not exceeding 60 days).

[2] Finding the Applicant ineligible for TPS on this basis alone, we did not address his remaining convictions.

[3] In his brief, the Applicant refers to his conviction for driving with an expired driver's license (in violation of section 322.03(5)), which we did not address in our decision on appeal. This does not affect our analysis on motion, as both offenses are classified as misdemeanors of the second degree under Florida law.

Here, the record shows that the Applicant appeared at his arraignment before the Court of the Circuit in and for [redacted] Florida with a public defender, entered a plea of *nolo contendere* (no contest) to the charge of operating a motor vehicle without a valid license, was adjudicated guilty by the court, and ordered to pay court fees and fines and serve one day in a county jail.

The Applicant asserts without citing any legal authority that operating a motor vehicle without a valid license, although classified as a misdemeanor under Florida law is a "petty offense" and not a "crime," which would require the "beyond reasonable doubt" standard of proof. He further claims that the prosecution's burden to prove that he was guilty of this offense was a preponderance of the evidence, and the resulting conviction therefore does not constitute a "conviction" for immigration purposes. The Applicant does not submit any evidence to support those claims, such as documents to show that criminal traffic offenses classified as misdemeanors are treated differently under Florida law than any other offenses within the same category, or that a lower standard of proof is required for a conviction to occur than that required in criminal proceedings.

Contrary to the Applicant's claim that operating a motor vehicle without a valid license is a "petty offense" despite its "misdemeanor" classification under state law, the term "crime" under Florida law "means a felony or *misdemeanor*." Fla. Stat. Ann. § 775.08(4) (West 2007) (Emphasis added). Furthermore, the court disposition concerning the Applicant's conviction for operating a motor vehicle without a valid license reflects that the offense was charged as a misdemeanor "criminal traffic violation." Prosecution of criminal traffic offenses in Florida is subject to the Florida Rules of Criminal Procedure. *See* Fla. R. Crim. P. Rule 3.010 (referencing section III of the Florida Rules of Traffic Court).[4] Furthermore, according to the Florida Standard Jury Instructions in Criminal Cases the burden of proof required for a conviction of operating a motor vehicle without a valid license in violation of section 322.03 of the Florida Statutes is "beyond a reasonable doubt." *See* Fla. Stat. Ann. Std. Crim. Jury Instr., 28.9 (West 2007) (providing that "to prove the crime of [operating a motor vehicle without a valid license] the State must prove . . . *beyond a reasonable doubt*" that the defendant (1) drove a motor vehicle upon a highway in Florida, and (2) at the time he or she did not have a valid driver's license recognized by the Department of Highway Safety and Motor Vehicles of the State of Florida.) (Emphasis added).

Based on the above, we conclude that the Applicant has not demonstrated that his 2007 court proceeding was not a "genuine criminal proceeding," and that his no contest plea accompanied by impositions of penalties by the court, did not constitute a conviction for immigration purposes.

We acknowledge the Applicant's claim that the police had no probable cause to perform the traffic stop that led to his arrest and conviction, and that as such it was illegal and violated his constitutional rights. However, in evaluating the Applicant's criminal record, we may not look behind the record of conviction to assess his guilt or innocence. *See Matter of Rodriguez-Carillo*, 22 I&N Dec. 1031, 1034 (BIA 1999) (unless a judgment is void on its face, an administrative agency cannot go behind the judicial record to determine guilt or innocence); *see also Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996).

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[4] *See* Rule 6.010(b), Florida Rules of Traffic Court, https://www-media.floridabar.org (providing that the Florida Rules of Criminal Procedure shall govern all prosecutions for criminal traffic offenses).

In conclusion, the Applicant has not established that we erred as a matter of law or USCIS policy in concluding that he was ineligible for TPS due to at least two misdemeanor convictions, or that our prior decision to dismiss his appeal on that ground was incorrect based on the evidence in the record at the time of the decision.

ORDER: The motion to reconsider is dismissed.