



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

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

In Re: 29022662

Date: NOV. 16, 2023

Appeal of California Service Center Decision

Form I-821, Application for Temporary Protected Status

The Applicant 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 ineligible for such status because she was convicted of a felony offense committed in the United States. On appeal, the Applicant does not contest that she was convicted of a felony, but asserts that the conviction should not be disqualifying due to ineffective assistance of counsel.

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.

Section 244(c)(2)(B)(i) of the Act provides in relevant part that noncitizens who were convicted of any felony committed in the United States are ineligible for TPS.

The corresponding regulations define the term “felony” as a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any, except when the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term actually served. 8 C.F.R. § 244.1.

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.

The record reflects that in 2020 the Applicant pled guilty to causing serious injury to another person while driving with a suspended license in violation of Florida Statutes Annotated (Fla. Stat.

Ann.) § 322.34(6)(b), a felony of the third degree.¹ A Florida Court withheld adjudication of the Applicant's guilt, and sentenced her to probation for a period of 36 months. The court also suspended the Applicant's driver's license and ordered her to pay restitution to the victim as well as the court and prosecution costs.

The Director determined that the Applicant was convicted of a felony, and was therefore ineligible for TPS on criminal grounds.

The Applicant does not dispute that she was convicted of this offense, or that it is a felony for TPS purposes. Rather, she asserts that her defense counsel did not adequately inform her about the potential consequences of pleading guilty to the criminal charges against her, "which resulted in unforeseen and detrimental effects on [her] immigration status." The Applicant claims that this was in violation of her constitutional right to effective assistance of counsel, as established in *Padilla v. Kentucky*. She further states that she will provide additional evidence in support of this claim within 30 days of filing the appeal. However, to date we have not received any additional documentation or correspondence from the Applicant and consider the record complete.

We acknowledge the Applicant's statements on appeal, but they are not sufficient to overcome the grounds for the denial of her TPS request. Although the U.S. Supreme Court held in *Padilla v. Kentucky*, 559 U.S. 356, 388 (2010) that the Sixth Amendment to the U.S. Constitution requires criminal defense counsels to advise their noncitizen clients about the risk of deportation arising from a guilty plea, this holding does not change the validity of a conviction for immigration purposes. Rather, a conviction is valid for immigration purposes unless it is subsequently vacated based on a ruling that it was legally defective. See *Matter of Marquez Conde*, 27 I&N Dec. 251, 252 (BIA 2018) (holding that if a court with jurisdiction vacates a conviction based on a defect in the underlying criminal proceedings, the individual no longer has a "conviction" within the meaning of section 101(a)(48)(A)); *Matter of Thomas & Matter of Thompson*, 27 I&N Dec. 674, 676 (A.G. 2019) (holding that state court orders that modify, clarify, or otherwise alter a sentence are only considered for immigration purposes if the order is based on procedural or substantive defects in the criminal proceeding).

Absent evidence that the Florida court vacated the Applicant's 2020 felony conviction on procedural or substantive grounds, we must conclude that she remains convicted of a felony offense committed in the United States and is statutorily ineligible for TPS.

ORDER: The appeal is dismissed.

¹ A felony of the third degree is punishable under Florida law "by a term of imprisonment not exceeding 5 years." See Fla. Stat. Ann. § 775.082.