



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

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

In Re: 32373369

Date: APR. 25, 2024

Appeal of a Vermont Service Center Decision

Form I-821, Application for Temporary Protected Status

The Applicant, a national of Somalia, 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 Vermont Service Center withdrew TPS, concluding that the Applicant was ineligible because he had been convicted of two or more misdemeanors committed in the United States; specifically, giving false information to a police officer (2002), driving after suspension (2002), and having no valid driver's license (2003). The matter is now before us on appeal. 8 C.F.R. § 103.3.

On appeal, the Applicant contends that he has not been convicted of two or more misdemeanors and remains eligible for TPS. He asserts that because his criminal records were available when he initially registered for TPS (from 2012 to 2018) and he was not found ineligible on criminal grounds then, the principal of collateral estoppel prevents him from being found ineligible now based on these past crimes. The Applicant also indicates that his convictions do not render him ineligible on criminal grounds because: 1). the 2002 offenses were for "petty misdemeanors," and required less than 5 days imprisonment as a maximum sentence and 2). his 2003 offense is not a crime, but a traffic violation. He submits criminal records and copies of the 2022 Minnesota Statutes in support.

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.

**A. Collateral Estoppel**

We have no authority to apply the doctrine of estoppel. See *Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338-39 (BIA 1991). Although federal courts may apply the doctrine against USCIS, we may not. *Id.*; see also *Chang v. United States*, 327 F.3d 911, 924 (9th Cir. 2003). Furthermore, the regulations provide that the Director may withdraw TPS if the applicant was not in fact eligible at the time TPS was granted. 8 C.F.R. § 244.14(a)(1). Thus, the Applicant's previous grants of TPS do not influence our current review.

## B. 2002 Convictions

An individual is ineligible for TPS if they have been convicted of any felony or two or more misdemeanors committed in the United States. Section 244(c)(2)(B) of the Act. The Department of Homeland Security (DHS) regulation defines a misdemeanor as a crime “either: (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) A crime treated as a misdemeanor under the term ‘felony’ of this section.” 8 C.F.R. § 244.1. Furthermore, “any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a felony or misdemeanor.” *Id.*

The record indicates that in 2001 police arrested the Applicant and in 2002 a court convicted him of giving a peace officer a false name under Minnesota Statutes 609.506 and driving without a valid license under Minnesota Statutes 171.24. The Applicant pled guilty to these offenses and was punished for them by being sentenced to one year of probation and a \$100 fine. The Applicant claims that these convictions do not meet the TPS definition of a misdemeanor because the maximum term of imprisonment for the offense does not exceed five days, labeling the offenses as “petty misdemeanors.”

At the time of the Applicant’s conviction, Minnesota Statutes 609.506, an offense within the criminal code, and 171.24, an offense within the transportation code, described these offenses as misdemeanors. Minnesota Statutes 171.241 (2002) affirms that violations of the transportation code on driver’s licenses can be misdemeanors when declared by a section of this code to be one. Notably, the least serious classification of these offenses was “misdemeanor,” with “gross misdemeanor,” also indicated for certain circumstances, but nowhere in these sections of the statutes does it indicate that these offenses would be classified as a “petty misdemeanor.” Instead, Minnesota Statutes 609.131 (2002) explained the process by which a misdemeanor must be treated as a petty misdemeanor indicating that the prosecuting attorney would certify to the court that prosecuting the offense as a petty misdemeanor would be in the interest of justice and the court would approve of the certification motion. The current record has no such evidence of this process occurring for the Applicant’s offenses. Thus, the current record indicates that these offenses are both misdemeanors.

Minnesota Statutes 609.02 (2002) states that a misdemeanor is a crime for which a sentence of not more than 90 days or a fine of not more than \$1,000, or both, may be imposed. As the maximum possible punishment for the Applicant’s offenses is more than five days, but not more than one year, they meet the TPS definition of a misdemeanor. Because the Applicant has already been found to have two misdemeanor convictions, no purpose would be served in currently reviewing whether his third conviction is also for a misdemeanor.

The Applicant has been convicted of two misdemeanors in the United States and is ineligible for TPS on criminal grounds.

**ORDER:** The appeal is dismissed.