

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



M₁

FILE:  OFFICE: CALIFORNIA SERVICE CENTER DATE: NOV 04 2010

IN RE: Applicant: 

APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254

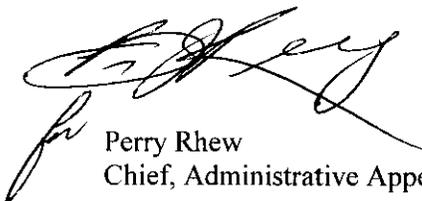
ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the California Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the California Service Center by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010, must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a native and citizen of Haiti who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant had been convicted of three misdemeanors in the United States.

On appeal, the applicant asserts that he believes the director's decision was in error as a matter of law, and that he should have been permitted to submit a waiver request.

An alien shall not be eligible for TPS under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

"Misdemeanor" means a crime committed in the United States, 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. For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 244.1.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record reflects that on June 5, 2004, the applicant was arrested by the Sheriff's Office in Lee County, Florida for driving under the influence. The applicant was also arrested on December 24, 2005, by the Fort Myers Police Department of Florida for driving under the influence - 2nd offense, driving with expired license, and hit and run.

Pursuant to a notice dated April 15, 2010, the applicant was requested to submit the final court dispositions for each of the arrests detailed above. In response, the applicant submitted court documents from the Lee County Circuit Court that reflect the following:

- On November 16, 2004, the applicant pled *nolo contendere* to violating Florida Statute section 316.193(2)(a), driving under the influence, a misdemeanor. The applicant was sentenced to serve ten days in jail, ordered to pay a fine and placed on probation for one year. Case no. 04-CT-042087.
- On June 26, 2006, the applicant pled *nolo contendere* to violating Florida Statute section 316.193(2)(a), driving under the influence, - 2nd offense, a misdemeanor, and driving while license has been expired for more than four months, a violation

of Florida Statute section 322.03(5), a misdemeanor of the second degree. The applicant was ordered to serve 90 days in jail for violating Florida Statute section 316.193(2)(a), and 60 days for violating Florida Statute section 322.03(5). The applicant was also ordered to pay a fine and was placed on probation for two years. Case no. 05-CF-020249.

The applicant is ineligible for TPS due to his three misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The applicant's statements made on appeal have been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above. Consequently, the director's decision to deny the application for this reason will be affirmed.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

On his TPS application, Part 4, item 2q(ii), the applicant checked "Yes" to having served in a prison, jail, prison camp, detention facility, labor camp, or any other situation that involved detaining persons.

Pursuant to the notice dated April 15, 2010, the applicant was requested to submit a statement which included the type of facility he served in; the name and location of the facility; the period(s) of time he served at the facility; his rank and title at the facility; a list of his specific duties; who provided the training and the location; a description of the detainees; and whether he had served voluntary or involuntary at the facility.

The applicant, however, failed to respond to the director's request. The applicant is, therefore, ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the application will be denied on this ground as well.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for TPS has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

Finally, while not the basis for the dismissal of the appeal, it is noted that the record reflects that on October 18, 2001, the applicant filed a Form I-589, Application for Asylum and for Withholding of Removal. A Form I-862, Notice to Appear, was issued and served on the applicant on December 18, 2001. On May 9, 2003, a removal hearing was held and the applicant's asylum application was denied and he was ordered removed from the United States.

The applicant appealed the immigration judge's decision to the Board of Immigration Appeals (BIA). On June 29, 2004, the BIA affirmed, without opinion, the immigration judge's decision.

ORDER: The appeal is dismissed.