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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

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE:

SEP 07 2010

IN RE: Applicant: [REDACTED]

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, with a fee of \$585. 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 failed to submit the requested court documents relating to his criminal record.

On appeal, the applicant submits documents from the Sherriff and Police Departments in an attempt to overcome the director's finding.

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).

"Felony" means 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. There is an exception 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. Under this exception, for purposes of 8 C.F.R. § 244 of the Act, the crime shall be treated as a misdemeanor. 8 C.F.R. § 244.1.

"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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC § 802). Section 212(a)(2)(A)(i)(II) of the Act.

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

On May 12, 2010, the director issued a notice requesting the applicant to submit evidence establishing his nationality, identity and his continuous residence and continuous physical presence in the United States during the requisite periods. The director also requested the applicant to submit certified court dispositions for his arrests on April 16, 1984, for drug trafficking—cocaine and drug trafficking—conspiracy; on October 2, 1995, for marijuana

purchase; and on November 8, 1998, for driving under the influence causing damage to property of person.

The applicant, in response, provided evidence in an attempt to establish his continues residence, continuous physical presence, nationality and identity. The applicant, however, failed to submit the requested certified court dispositions.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on June 21, 2010. On appeal, the applicant submits:

1. An arrest report and a Complaint Affidavit from the Sheriff's Department of Broward County, Florida, which indicate that on April 16, 1984, the applicant was arrested for trafficking in cocaine, a violation of Florida Statute section 893.135, and conspiracy to traffic, a violation of Florida Statute section 893.135(4).
2. A Complaint /Arrest Affidavit and jail Booking Record from the Miami-Dade Police Department, which indicate that on October 2, 1995, the applicant was arrested for purchase of marijuana, a violation of Florida Statute section 893.13, and driving while license is suspended, a violation of Florida Statute section 322.34.
3. A Complaint/Arrest Affidavit from the Miami-Dade Police Department, which indicates that on November 8, 1998, the applicant was arrested for driving under the influence, a violation of Florida Statute section 316.193; leaving the scene with property damage, a violation of Florida Statute section 316.06(1); and driving under the influence causing property damage, a violation of Florida Statute section 316.193(a)(b)(c)(1).

The final outcome for each arrest, however, is unknown as the requested certified *court* dispositions were not made available to U.S. Citizenship and Immigration Services (USCIS). The applicant has the burden to establish, with affirmative evidence, that outstanding charges were dismissed or were in error.

The applicant has failed to provide any evidence revealing the final court dispositions of his arrests detailed above. The applicant is 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 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).

The term *continuously physically present*, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The term *continuously resided*, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Persons applying for TPS offered to Haitians must demonstrate continuous residence in the United States since January 12, 2010, and continuous physical presence in the United States since January 21, 2010.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by USCIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

A review of the evidence the applicant submitted at the time he filed his TPS application and in response to the notice of May 12, 2010, only establishes his residence and physical presence in the United States through January 5, 2009.

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since January 12, 2010, and his continuous physical presence in the United States since January 21, 2010. The applicant has failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Therefore, the TPS application must be denied on these basis 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.

ORDER: The appeal is dismissed.