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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:  OFFICE: CALIFORNIA SERVICE CENTER DATE:

SEP 22 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, 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 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 two misdemeanors in the United States.

On appeal, the applicant asserts that he has one misdemeanor conviction because the violations stemmed from one incident.

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 record reveals that on September 10, 2003, the applicant was arrested by the Sheriff's Office in Orange County, Florida for trespassing and disorderly conduct.

In response to a Request for Evidence dated April 26, 2010, the applicant submitted certified court documents, which reflect that on [REDACTED], the applicant pled *nolo contendere* to violating Florida Statute 810.88, trespassing, and Florida Statute 877.03, disorderly conduct, both misdemeanors of the first degree. Adjudication of guilt was withheld and the applicant was ordered to pay a fine. Case no. [REDACTED]

The fact that the offenses from the applicant's arrest on September 10, 2003 arose from a common scheme does not preclude them from being counted as separate offenses. The applicant was charged with two separate counts and he pled to separate offenses. *Black's Law Dictionary*, 353 (7th Ed., 1999) defines the term "count" to mean a separate and distinct claim in a complaint or similar pleading. It also indicates that the term "count" is used to signify the part of an indictment charging a distinct offense. Therefore, the applicant has been convicted of two separate and distinct offenses.

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or *nolo contendere* or has admitted

sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

In the instant case, the court documents submitted reflect that the applicant pled *nolo contendere* to each charge, and the judge ordered some form of punishment to the charges above. Therefore, the applicant has been "convicted" of the misdemeanor offenses for immigration purposes.

The applicant is ineligible for TPS due to his two 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 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 July 22, 2000, a Form I-862, Notice to Appear, was issued. A removal hearing was held on February 7, 2002, and the applicant was ordered removed from the United States. The applicant appealed the immigration judge's decision to the Board of Immigration Appeals (BIA). On April 15, 2002, the appeal was dismissed due to lack of jurisdiction.¹ The applicant filed a motion to reopen, which was denied by the BIA on May 17, 2004. The applicant filed a motion to reconsider before the BIA, which was denied on September 15, 2004.

ORDER: The appeal is dismissed.

¹ The appeal was filed untimely.