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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



M,

DATE:

JUL 12 2012

Office: CALIFORNIA SERVICE CENTER

FILE:



IN RE:

Applicant:



APPLICATION:

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

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 she found the applicant inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to his drug-related conviction.

On appeal, the applicant apologizes for his previous wrongdoing. The applicant asserts that he received faulty legal advice by the public defenders and “was left to the mercies of incompetent counsels.” The applicant asserts that he is not a threat to society and requests that his application be approved based on humanitarian grounds.

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).

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, 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.

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 record reflects that on November 7, 1986, in the Broward County Circuit Court of Florida, the applicant pled guilty to possession of cocaine, a violation of Florida Statute 893.03/893.13. Adjudication of guilt was withheld and the applicant was placed on probation for one year and ordered to pay court cost. Case no. [REDACTED]

The Federal Bureau of Investigation report dated September 24, 2010, reveals the following offenses in the state of Florida:

1. On May 16, 1988, the applicant was arrested by the Miami-Dade Police Department for probation violation. The applicant was turned over to another agency.

2. On May 19, 1988, the applicant was arrested by the Broward County Sheriff's Office for probation violation.
3. On June 29, 1989, the applicant was arrested by the Fort Lauderdale Police Department for cocaine possession.
4. On December 16, 1993, the applicant was arrested by the Miami Police Department for aggravated battery. On January 19, 1994, the charge was dropped by the State Attorney's Office.

On February 7, 2012, the applicant was requested to submit certified court dispositions of the above arrests. The applicant, in response, submitted court documents relating to his arrest on August 12, 1986 and subsequent guilty plea on November 7, 1986, for possession of cocaine. The applicant also submitted court documentation dated August 11, 1989, relating to the termination of his probation.

The director, in her decision of March 14, 2012, noted that the applicant's former attorney had filed a petition with the Broward County Circuit Court in 2008 to vacate the drug conviction, and that the applicant, in the motion, indicated that he was not aware of the immigration consequences. The director determined that as no evidence was submitted establishing that the conviction had been vacated, the drug conviction would stand for immigration consequences.

It is noted that during the applicant's HRIFA¹ proceedings on April 19, 2009, the applicant informed the immigration judge that the motion to vacate his drug conviction had been denied.

Convictions that have been vacated due to procedural or substantive defects in the underlying proceedings are no longer valid convictions for immigration purposes. *See e.g., Alim v. Gonzales*, 446 F.3d 1239, 1248-50 (11th Cir. 2006), *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006).

To date, the applicant has not provided any credible evidence to support his assertion that he had not been advised of the possible immigration consequences of a guilty plea by the trial court. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO concludes that the drug conviction continues to effect immigration consequences.

The applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to his drug-related conviction. Consequently, the director's decision to deny the application for this reason will be affirmed.

¹ Haitian Refugee Immigrant Fairness Act of 1998.

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 this appeal, it is noted that on May 28, 1997, exclusion proceedings were held and the applicant was ordered excluded and deported from the United States. The applicant appealed the immigration judge's (IJ) decision to the Board of Immigration Appeals (BIA). On August 4, 1998, the BIA dismissed the appeal. On April 15, 2009, HRIFA proceedings were held and the applicant's application for adjustment of status under HRIFA was denied. The applicant appealed the IJ's decision to the BIA. On March 30, 2010, the BIA affirmed, without opinion, the IJ's decision

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.