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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: AUG 27 2014 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The applicant claims to be a 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. On July 9, 2012, the director denied the application because she found that the applicant had failed to submit requested court documentation relating to her criminal record.

On appeal, the applicant asserts "I'm being charged falsely because of my cousin." The applicant claims that her cousin "filed all these charges" against her because they were no longer on good terms. The applicant requests that her application be reconsidered as she has a family to support in the United States and in Haiti.

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.

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.

Section 101(a)(48)(B) of the Act provides, "any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part."

The AAO conducts appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012).

The record reflects the applicant's criminal history in the state of Florida as follows:

1. On February 17, 1998, the applicant was arrested by the Sheriff's Office of County for violating Florida Statute 784.045, aggravated battery, a felony.
2. On or about September 11, 2006, the applicant was arrested in County for violating Florida Statute 322.03(5), driving while license has been expired for more than four months, a misdemeanor of the second degree.
3. On August 12, 2010, the applicant was arrested by the Police Department for violating Florida Statue 812.014(2)(c), two counts of larceny-grand theft in the third degree; Florida Statute 831.09, uttering forged bills, and Florida Statute 831.01, forgery, all felonies.
4. On or about August 6, 2011, the applicant was arrested in County for violating Florida Statute 322.34(2), driving while license is suspended, a misdemeanor.

On March 29, 2012, the director issued a notice requesting the applicant to provide certified judgment and conviction documents from the courts for all arrests. In response, the applicant submitted a certified complaint affidavit from the Circuit Court for County, Florida, which indicated that the applicant had been arrested on February 17, 1998 and charged with aggravated battery without firearm. The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application.

Although the applicant failed to provide the requested court documents, the record contains certified court documents relating to her arrest in 1998.[1] The certified court documents from the Circuit/County Court, in and for County, Florida indicate that on July 29, 1998, the applicant pled *nolo contendere* to aggravated battery. Adjudication of guilt was withheld and the applicant was placed on probation for three years, and ordered to pay a fine and court cost. The court documents do not indicate that the felony charge had been reduced to a misdemeanor offense. Case no

The applicant's statements on appeal are noted. However, we are not the appropriate forum to determine constitutional issues involving an applicant's criminal record. Rather, those issues are within the jurisdiction of the judicial court. Furthermore, we may only look to the judicial records to determine whether the person had been convicted of the crime, and may not look behind the conviction to reach an independent determination concerning guilt or innocence. *Pablo v. INS*, 72

[1] The court documents were requested and obtained by Immigration and Customs Enforcement in March 2013.

F.3d 110, 113 (9th Cir. 1995); *Gouveia v. INS*, 980 F.2d 814, 817 (1st Cir. 1992); and *Matter of Roberts*, 20 I&N Dec. 294 (BIA 1991).

The applicant is ineligible for TPS due to her felony conviction. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). There is no waiver available, even for humanitarian reasons, of the requirements stated above. The applicant is also ineligible for TPS because she has failed to provide evidence revealing the final court dispositions of her remaining arrests detailed above. 8 C.F.R. § 244.9(a). The applicant has the burden to establish, with affirmative evidence, that no charges were filed or that the charges were dismissed or in error. 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 Siddiqui v. Holder*, 670 F.3d at 741.

Beyond the decision of the director, the record reflects that on November 1, 2006, a removal hearing was held and the applicant was ordered removed *in absentia*. The Form I-205, Warrant of Removal/Deportation,[2] indicates that on June 18, 2013, the applicant was removed from the United States. Congress provided no relief for failure to maintain continuous residence due to a departure under an order of removal. Relief is provided for absences based on factors other than deportation/removal, namely absences due to emergencies and absences approved under the advance parole provisions. 8 C.F.R. § 244.1(2).

As a result of the removal on June 18, 2013, the applicant has not continuously resided and has not been continuously physically present in the United States. The applicant has, thereby, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Therefore, the application must also be denied on these grounds.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal. 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.

[2] The Form I-205 was issued on November 1, 2006.