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: NOV 17 2014 Office: CALIFORNIA SERVICE CENTER

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:

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,

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The re-registration 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 is a native and citizen of Haiti who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254. On August 7, 2014, the director denied the re-registration application because the applicant: 1) no longer had TPS; and 2) had been convicted of four misdemeanors in the United States.

On appeal, counsel asserts that the director incorrectly interpreted Florida law to deny the application. Counsel indicates at Part 3.1.b on the appeal form that a brief and/or additional evidence would be submitted to the AAO within 30 days.[1] However, more than 60 days later, no additional correspondence has been presented by counsel or the applicant. Therefore, the record must be considered complete.

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 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.

The AAO conducts appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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[1] Every appeal submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. 8 C.F.R. § 103.2(a)(1). The Form I-290B instructs the applicant to submit a brief and additional evidence to the AAO within 30 days of filing the appeal.

The record reflects that the applicant was granted TPS on June 10, 2010. On August 5, 2011, the applicant filed TPS application [redacted] and indicated that he was re-registering for TPS. On March 21, 2012, the director denied that application due to the applicant's misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). No appeal was filed from the denial of that application.

The applicant filed another TPS application [redacted] on February 20, 2013, and indicated that he was re-registering for TPS. On September 27, 2013, the director denied that application and simultaneously withdrew TPS due to the applicant's misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. §§ 244.4(a) and 244.14(a)(1). No appeal was filed from the denial of that application.

The applicant filed the current TPS application on May 5, 2014, and indicated that he was re-registering for TPS. The re-registration period is limited to individuals: 1) whose applications have been granted; 2) whose applications remain pending; or 3) who did not file during the initial registration period and meet any of the criteria under the late initial registration provisions described in 8 C.F.R. § 244.2(f)(2).

The applicant was not eligible to re-register for TPS as he had no application that remained pending and his initial application was no longer approved due to the withdrawal of TPS on September 27, 2013. In addition, the record contains no evidence to establish that this application should have been accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the current re-registration application on this ground will be affirmed.

The record contains the following from the Fifteenth Judicial Circuit Court in and for [redacted] County, Florida:

1. Certified court documentation in Case no. [redacted] which indicates that on or about February 22, 2003, the applicant was charged with driving while license suspended/cancelled/revoked. The complaint was amended to no driver's license, a violation of Florida Statute 322.03, and on [redacted] 2003, the applicant pled guilty to this offense. Adjudication of guilt was withheld and the applicant was ordered to pay court costs.
2. Certified court documentation in Case no. [redacted] which indicates that on or about February 9, 2008, the applicant was charged with operating vehicle while driver's license suspended/cancelled, a violation of Florida Statute 322.34(a). On [redacted] 2008, the applicant pled guilty to the offense and adjudication of guilt was withheld. The applicant was ordered to pay court costs.
3. Certified court documentation in Case no. [redacted], which indicates that on or about July 26, 2008, the applicant was charged with operating vehicle while driver's license suspended/cancelled, a violation of Florida Statute 322.34(a). On [redacted] 2008, the applicant pled guilty to and was adjudged guilty of violating this offense. The applicant was ordered to pay court costs.

4. Certified court documentation in Case no. which indicates that on or about January 17, 2009, the applicant was charged with operating vehicle while driver's license suspended/cancelled. The complaint was amended to no driver's license, a violation of Florida Statute 322.03, and on 2009, the applicant pled guilty to and was adjudged guilty of violating this statute. The applicant was ordered to pay court costs.

Florida law provides that:

- A first conviction of any person whose driver's license or driving privilege has been canceled, suspended, or revoked (except statute 322.264) is guilty of a misdemeanor of the second degree, punishable as provided in section 775.082 or section 775.083. Florida Statute 322.34(2)(a).
- A second conviction of any person whose driver's license or driving privilege has been canceled, suspended, or revoked (except statute 322.264) is guilty of a misdemeanor of the first degree, punishable as provided in section 775.082 or section 775.083. Florida Statute 322.34(2)(b).
- Anyone who violates operating without a valid license (except paragraph (c)) is guilty of a misdemeanor of the first degree, punishable as provided in section 775.082 or section 775.083. Florida Statute 322.03(3)(b).

On appeal, counsel asserts that the director incorrectly interpreted that the applicant's prior convictions for traffic citations were misdemeanors.

The fact that Florida's legal taxonomy may classify the applicant's offenses as "traffic offenses" rather than "crimes," is simply not relevant to the question of whether the offenses qualify as "misdemeanors" for immigration purposes. The regulation clearly states that a misdemeanor is a crime "*punishable* by imprisonment for . . . one year or less, *regardless of the term . . . actually served.*" [Emphasis added.] Likewise, the regulation clearly states that a criminal violation will not be considered a misdemeanor only if it is "*punishable* by imprisonment for a maximum term of five days or less." [Emphasis added.] The operative word is "punishable," which indicates that a misdemeanor is defined under the regulation by the maximum imprisonment possible for the crime under Florida law, not the specific prison term meted out by the judge in a particular case. In the instant case, the applicant was convicted of offenses for which Florida law provides the maximum penalty: for the conviction of a misdemeanor of the second degree is imprisonment for a period of not more than 60 days in jail, and the maximum penalty for a conviction of a misdemeanor of the first degree is imprisonment for a period of not more than a year. *See* Florida Statutes sections 775.082(4) and 775.083(1). The applicant, in this case, is applying for benefits under the federal law. Therefore, the above violations of Florida Statutes 322.03 and 322.34(a) qualify as "misdemeanors" as defined for immigration purposes in 8 C.F.R. § 244.1.

The court documents submitted reflect that the applicant pled guilty to violating Florida Statutes 322.34(2) and 322.03, and the judge ordered some form of penalty to each charge above.

Therefore, the applicant has been convicted of the misdemeanor offenses for immigration purposes. Section 101(a)(48)(A) of the Act

The applicant is ineligible for TPS due to his misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the re-registration application on this ground will also be affirmed.

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 a removal hearing was held on May 5, 1999, and the applicant's applications for asylum, withholding of removal and convention against torture were denied, and he was ordered removed from the United States. The applicant appealed the Immigration Judge's decision to the Board of Immigration Appeal (BIA). On March 29, 2002, the BIA dismissed the appeal.

ORDER: The appeal is dismissed.