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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

M,

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date:

DEC 14 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 \$630. 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. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen or reconsider. The motion will be dismissed.

The applicant is 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.

The director denied the application because the applicant had failed to submit the requested court documents relating to his criminal record. The AAO, in dismissing the appeal, on September 7, 2010, concurred with the director's findings. The AAO conducted appellate review on a *de novo* basis,¹ and determined that the applicant had also failed to establish continuous residence and continuous physical presence during the requisite periods.

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

A motion to reconsider must state the reason for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy ... [and] must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion, the applicant submits the requested certified court dispositions, which reflects the following:

- For his arrest on April 16, 1984, the applicant, on December 6, 1984, was convicted of trafficking in cocaine, a violation of Florida Statute section 893.135, and conspiracy to traffic, a violation of Florida Statute section 893.135(4), both felonies. The applicant was sentenced to serve 18 months in prison and ordered to pay a fine. Case no. [REDACTED]
- For his arrest on October 2, 1995, the applicant, on October 23, 1995, pled guilty to purchase of cannabis, a violation of Florida Statute section 893.13, a felony of the third degree. Case no. [REDACTED] The court document also indicates that an additional offense of cannabis/purchase was "transf to other CA." Case no. [REDACTED]

¹ The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has long been recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

- For his arrest on November 8, 1998, the applicant, on January 11, 1999, was convicted of driving under the influence, a violation of Florida Statute section 316.193, a misdemeanor. Case no. [REDACTED]. On the same date, a *nolle proesse* was entered for the driving under the influence causing property damage charge. Case no. [REDACTED]

"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 applicant is ineligible for TPS due to his felony convictions. 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 inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to his drug-related convictions. There is no waiver available for inadmissibility under this section of the Act.

Finally, the applicant fails to establish on motion sufficient credible evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. Assuming, arguendo, the applicant had provided said evidence, he would still be ineligible for TPS due to his felony convictions.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met his burden of proof. Accordingly, the motion will be dismissed, the prior decision of the AAO will be affirmed and the application will remain denied.

ORDER: The motion is dismissed. The previous decision of the AAO is affirmed and the application will remain denied.