

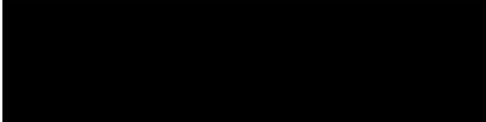
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

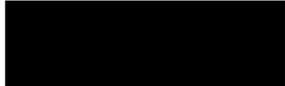


**U.S. Citizenship
and Immigration
Services**



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FILE:



OFFICE: CALIFORNIA SERVICE CENTER DATE: **NOV 04 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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010, must be filed with the \$630 fee. 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 apologizes for his previous wrongdoings and requests that his TPS application be reconsidered.

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 reflects that on March 25, 2007, the applicant was arrested by the Sheriff's Office in Lee County, Florida for driving under the influence – 1st offense, refuse to submit to a driving under the influence test, hit and run, and resisting officer-without violence.

Pursuant to a notice dated April 29, 2010, the applicant was requested to submit the final court dispositions for all arrests. The applicant, in response, submitted court documentation from the Lee County Court, which reflects that on August 2, 2007, the applicant pled *nolo contendere* to violating Florida Statute section 316.193(3), driving under the influence causing personal and/or personal damage, a misdemeanor of the second degree, and Florida Statute section 843.02, resist/obstruct officer without violence, a misdemeanor of the first degree. Case no. [REDACTED]

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 June 23, 2004, the applicant filed a Form I-589, Application for Asylum and for Withholding of Removal. A Form I-862, Notice to Appear, was served on the applicant on June 1, 2005. On April 4, 2007, a removal hearing was held and the applicant's asylum application was denied and he was ordered removed from the United States. The applicant appealed the immigration judge's (IJ) decision to the Board of Immigration Appeals (BIA). On May 22, 2008, the BIA affirmed, without opinion, the IJ's decision.

ORDER: The appeal is dismissed.