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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 12 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 (AAO) 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 at least one felony in the United States.

On appeal, the applicant acknowledges his drug convictions, but asserts, "I was never participated in the selling of illegal substance," and that he "was trapped by ignorance of the English language." The applicant requests that his TPS application be approved under the convention against torture.

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.

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 October 23, 1986, the applicant was arrested by the Fort Lauderdale Police Department of Florida for loitering, possession of marijuana and possession of cocaine. On November 26, 1986, in the Circuit Court for Broward County, Florida, the applicant pled guilty to possession of cocaine, a violation of Florida Statute section 893.13(1)(e), a felony, and possession of cannabis, a violation of Florida Statute section 893.13(1)(f), a misdemeanor.

Adjudication of guilt was withheld. The applicant was placed on probation for two years and ordered to pay a fine. Case no. 86-16043CF.

On September 30, 1996, section 322 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [IIRAIRA], Pub. L. 104-208, 110 Stat. 3009 (1996), amended the Act to include the following definition of a conviction. This new provision clarifies Congressional intent that even in cases where adjudication is "deferred," the original finding or confession of guilt is sufficient to establish a "conviction" for purposes of the immigration laws. H.Rept. 104-828.

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if 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 court dispositions reflect that the applicant pled *guilty* to the offenses and the judge ordered some form of punishment and a restraint on the applicant's liberty to each charge above. Therefore, the applicant has been "convicted" of the offenses for immigration purposes.

Although this section was finalized after the applicant's convictions occurred it applies to convictions and sentences entered before, on, or after the date of the enactment of IIRAIRA (the 1996 Act). IIRAIRA, section 322(c).

The record also reflects that on August 2, 1988, the applicant was convicted in the Circuit Court for Broward County, Florida of possession of cocaine, a violation of Florida Statute section 893.13(1)(f). The applicant was sentenced to serve 28 months in the Florida state prison. The applicant was credited with 25 days served. Case no. [REDACTED]

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. 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 Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The applicant is inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to his drug-related convictions. Therefore, the application must also be denied for this reason. There is no waiver available for inadmissibility under this section of the Act.

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 an exclusion hearing was held on January 25, 1991, and the applicant was ordered excluded and deported from the United States. The applicant filed a motion to reopen before the immigration court, which was denied by the immigration judge on August 2, 1991. The applicant appealed the immigration judge's (IJ) decision to the Board of Immigration Appeals (BIA). On February 19, 1992, the BIA dismissed the appeal.

ORDER: The appeal is dismissed.