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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 23 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:

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. 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 a felony in the United States.

On appeal, counsel questions “whether one instance of a felony conviction for possession of unlawfully issued driver’s license constitute a crime of moral turpitude barring the respondent from obtaining any immigration benefits especially TPS given the current conditions in respondent’s native country of Haiti.” Counsel requests the application be granted due to humanitarian reasons.

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 record reveals that on July 4, 2009, the applicant was arrested by the Sheriff’s Office of Broward County, Florida for unauthorized possession of a driver license, a violation of Florida Statue section 322.212(1)(b), a felony of the third degree, and expired driver’s license over four months, a violation of Florida Statute section 322.03(5)(b), a misdemeanor in the second degree. On October 29, 2009, the applicant pled *nolo contendere* to both offenses. Adjudication of guilt was withheld and the applicant was placed on probation for one year and ordered to pay a fine. Case no. 09012376CF40A.

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 disposition reflect that the applicant pled *nolo contendere* 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.

On appeal, counsel asserts that the applicant has met the burden establishing that he did not commit a crime involving moral turpitude barring him from obtaining TPS.

The director, in denying the application, did not find the applicant to have committed a crime involving moral turpitude. Rather, the application was denied solely based on the applicant's *felony* conviction. The applicant is, therefore, ineligible for TPS due to his 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. 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 a Form I-862, Notice to Appear, was issued and served on the applicant on May 10, 1999. A Form I-589, Application for Asylum and Withholding of Deportation, was filed on August 26, 1999. A removal hearing was held on April 5, 2000, 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 June 24, 2002, the BIA affirmed, without opinion, the IJ's decision.

ORDER: The appeal is dismissed.