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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

PUBLIC COPY



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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: 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. 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 four misdemeanors in the United States.

On appeal, the applicant provides an explanation that led up to each arrest. The applicant claims that he did not participate in any form of gambling, he had informed the police officer that the license tag was registered under his name, and the charge of resisting an officer was due to a language barrier. The applicant indicates at Part 2 on the appeal form that a brief and/or additional evidence would be submitted to the AAO within 30 days.¹ However, more than 45 days later, no additional evidence has been presented.

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 the following offenses committed in the state of Florida:

1. On April 15, 1995, the applicant was arrested by the Sheriff's Office of Polk County for battery – domestic violence, a violation of Florida Statute section 784.03, a misdemeanor in the first degree.
2. On August 6, 1996, the applicant was arrested by the Lake Alfred Police Department for resisting an officer without violence, a violation of Florida statute section 843.02, a misdemeanor of the first degree. A violation of Florida Statute section 784.03, battery, was subsequently added.
3. On June 17, 1999, the applicant was arrested by the Sheriff's Office of Polk County for battery, a violation of Florida Statute section 784.03(1)(a)(1), a

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.

misdemeanor in the first degree, and assault, a violation of Florida Statute section 784.011, a misdemeanor in the second degree.

4. On April 21, 2003, the applicant was arrested by the Sheriff's Office of Polk County for battery, a violation of Florida Statute section 784.03(1)(a)(1), a misdemeanor in the first degree
5. On May 25, 2004, the applicant was arrested by the Winter Haven Police Department for fail to register motor vehicle, a violation of Florida Statute section 320.02(1), a misdemeanor of the second degree.
6. On August 27, 2009, the applicant was arrested for gambling or games of chance, a violation of Florida Statute section 849.08, a misdemeanor of the second degree.

In response to a notice dated June 30, 2010, which requested the applicant to submit the final court disposition for all arrests, the applicant submitted court documents, which revealed the following:

- On November 27, 1995, a *nolle prosequi* was entered for the domestic battery offense in number one above.
- On August 15, 1996, the applicant was convicted of resisting/obstruct officer without violence and ordered to pay a fine.
- For number two above, a *nolle prosequi* was entered for the battery charge on May 9, 1996. Case no. in number one above.
- On September 30, 1996, the applicant was convicted of violation of restrictions placed on driver's licenses, a violation of Florida Statute section 322.16.
- For number three above, the applicant was found not guilty on both charges.
- For number four above, a *nolle prosequi* was entered on July 29, 2003.
- On October 29, 2004, the applicant was convicted of violating Florida Statute section 320.02(1). The applicant was ordered to pay a fine.
- On February 15, 2010, the applicant was convicted of gambling and was ordered to pay a fine.

The applicant's statements on appeal have been considered. The AAO, however, is not the appropriate forum to determine constitutional issues involving the applicant's convictions. Rather, those issues are within the jurisdiction of the judicial court. Furthermore, the AAO may only look to the judicial records to determine whether the person had been convicted of the crime, and may not look behind the conviction to reach an independent determination concerning guilt or innocence. *Pablo v. INS*, 72 F.3d 110, 113 (9th Cir. 1995); *Gouveia v. INS*, 980 F.2d 814, 817 (1st Cir. 1992); and *Matter of Roberts*, 20 I&N Dec. 294 (BIA 1991).

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). 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.

ORDER: The appeal is dismissed.