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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: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **NOV 26 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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

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 asserts that the offenses should be treated as an accident or traffic violations, but not as misdemeanor crimes. The applicant apologizes for his previous wrongdoings and requests that his application be reconsidered and approved based on humanitarian reasons. The applicant provides additional court documents relating to his arrest on September 14, 2006, and for another arrest that occurred on January 10, 2007.

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.

At the time the applicant's TPS application was filed, court documentation from the Broward County Court of Florida was submitted, which reflected that on September 14, 2006, the applicant pled no contest to leaving the scene of an accident, a violation of Florida Statute section 316.061, and failure to register vehicle, a violation of Florida Statute section 320.02(1), both misdemeanors of the second degree. Adjudication of guilt was withheld and the applicant was ordered to pay restitution. Case no. [REDACTED]

On appeal, the applicant provides court documentation from the Broward County Court of Florida, which reflects that on March 15, 2007, the applicant pled no contest to unlawful license tag, a violation of Florida Statute section 320.261, and failure to register vehicle, a violation of Florida Statute section 320.02(1), both misdemeanors of the second degree. Adjudication of guilt was withheld. The applicant was ordered to pay a fine. Case no. [REDACTED]

Any persons convicted of violating any of the provisions of Florida Statute section 320, unless otherwise provided, is guilty of a misdemeanor of the second degree. See Florida Statute section 320.57(1). The maximum penalty for a conviction of a misdemeanor of the second degree is imprisonment for a period of not more than 60 days in jail or by a fine of not more than \$500, or

both such fine and imprisonment. *See* Florida Statute sections 775.082 and 775.083. As cited above, for immigration purposes, a misdemeanor is any offense that “is punishable by imprisonment for a term of one year or less, *regardless of the term such alien actually served, if any.*”

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, 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 submitted reflects that the applicant pled no contest to the offenses and the judge ordered some form of punishment to the charges. Therefore, the applicant has been "convicted" of the offenses for immigration purposes.

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). The applicant's statements on appeal have been considered. However, 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 the applicant filed a Form I-589, Application for Asylum and for Withholding of Removal, on April 11, 2005. A Form I-862, Notice to Appear, was issued and served on the applicant on June 9, 2005. On April 3, 2006, 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 decision to the Board of Immigration Appeals (BIA). On October 17, 2007, the BIA dismissed the applicant's appeal.

ORDER: The appeal is dismissed.