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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

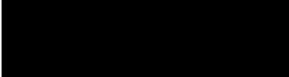


U.S. Citizenship
and Immigration
Services

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FILE:  OFFICE: CALIFORNIA SERVICE CENTER DATE:

NOV 26 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, 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,

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 she found that the applicant had failed to submit all the requested court documentation relating to his criminal record.

On appeal, the applicant submits additional copies of the requested court dispositions.

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

Along with his TPS application, and in response to a notice dated June 30, 2010, the applicant submitted:

- A Florida uniform traffic citation issued on August 30, 1996, for driving against driver's license restrictions, a violation of Florida Statute section 322.16(1)(b). A booking report from the Sheriff's Office of Broward County for violation of restricted driver's license and failure to obey driver's license restriction. Court documentation from Broward County Court indicating that on October 24, 1996, the applicant pled *nolo contendere* to violation of restricted driver's license and failure to obey driver's license restriction in Case no. [REDACTED]
- Florida uniform traffic citations issued on January 27, 1998, for altered tag, expired tag and unsecured/obscured tag. A booking report from the Sheriff's Office of Broward County, which appeared to indicate that the applicant was arrested under warrant on March 10, 1998. Court documentation from Broward County Court relating to the arrest on March 10, 1998, for unlawful alteration of tag, a violation of Florida Statute section 320.061, a misdemeanor of the second degree. On March 24, 1998, the applicant pled *nolo contendere* to the charge.

Adjudication of guilt was withheld, and the applicant was ordered to pay a fine and attend a driver improvement course. Case no. [REDACTED]

- A Florida uniform traffic citation issued on October 18, 2000, for possess suspended driver's license, a violation of Florida Statute section 322.32(1), a misdemeanor of the second degree. A booking report and a Short Arrest Information Form from the Sheriff's Office of Broward County, Florida, which appeared to indicate that the applicant was arrested under warrant on February 13, 2001. Court documentation from Broward County Court relating to the arrest on February 13, 2001, for possess suspended driver's license. The applicant pled *nolo contendere* to the charge. Adjudication of guilt was withheld and the applicant was ordered to pay a fine. Case no. [REDACTED]
- A booking report from the Sheriff's Office of Broward County for an arrest on July 24, 2007, for operating a vehicle without a valid driver's license, a violation of Florida Statute section 322.03(1), a misdemeanor of the second degree. Court documentation from Broward County Court relating to the arrest on July 23, 2007, for operating a vehicle without a valid driver's license. On October 4, 2007, the applicant pled no contest to the charge. Adjudication of guilt was withheld and the applicant was ordered to pay a fine. Case no. [REDACTED]

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 documents reflect that the applicant pled *nolo contendere* to the offenses and the judge ordered some form of punishment and/or a restraint on the applicant's liberty to each charge. Therefore, the applicant has been "convicted" of the offenses for immigration purposes.

On appeal, the applicant submits additional copies of the uniform traffic citations issued on August 30, 1996, and October 18, 2000, and the court dispositions in Case nos. [REDACTED] and [REDACTED]

The director, in denying the application, noted that the applicant had failed to submit all of the requested final court dispositions. Upon review of the record, the applicant did not provide certified court documentation regarding the *initial* outcome in Case no. [REDACTED]. Nevertheless, the remaining court dispositions provided are sufficient to render a finding of ineligibility.

The applicant is ineligible for TPS due to his misdemeanor convictions in the United States. 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.

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 records reflects that a deportation proceeding was held on October 5, 1995, and the alien was ordered deported from the United States. The applicant appealed the immigration judge's decision to the Board of Immigration Appeals (BIA). On October 17, 1996, the BIA dismissed the appeal. On April 30, 2001, a Form I-130, Petition for Alien Relative, was filed on behalf of the applicant. On December 11, 2009, the petition was denied.

ORDER: The appeal is dismissed.