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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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[REDACTED]

FILE:

[REDACTED]

OFFICE:

[REDACTED]

DATE:

NOV 30 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:

[REDACTED]

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 [REDACTED] Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, [REDACTED] Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant claims to be a native and citizen of [REDACTED] 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 failed to submit the requested court disposition.

On appeal, the applicant through counsel asserts that he has never been arrested and/or convicted of a crime. Counsel asserts that the applicant was a crewman aboard a boat docked in [REDACTED] and that the principals involved in the crime were arrested and convicted of said crime. Counsel asserts that the applicant was detained overnight and repatriated to [REDACTED] the next morning.

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

The Federal Bureau of Investigation report dated June 8, 2010, reflects that on February 21, 1991, the applicant was arrested or received by the Drug Enforcement Agency (DEA) in [REDACTED] for violation of federal narcotics law. The applicant was subsequently turned over to the legacy Immigration and Naturalization Service (INS).

In response to the notice dated June 16, 2010, which requested the applicant to submit the final disposition of the above offense, the applicant asserted, in pertinent part:

That while I was working as a crewman with a visa under the name of [REDACTED] [REDACTED] I and all the crew members were detained on February 21, 1990 by the DEA on board the ship that was docked on the [REDACTED]

That drugs were found on board the ship and several people arrested, including the captain.

That most crew members, including myself, were never charged.

That we were detained overnight and taken to the airport the next morning, February 22nd to board a flight to [REDACTED]

The director determined that the applicant had failed to submit the requested court disposition and denied the application on August 3, 2010.

The record reflects that at the time of his apprehension on February 21, 1990, the applicant was assigned alien registration number [REDACTED]. A review of that record indicates that on the same date, the applicant's crew's landing permit was refused, and he was ordered removed from the United States on February 22, 1990 pursuant to the Form I-259, Notice to Detain, Deport, Remove or Present Aliens, dated February 21, 1990. The applicant, along with eight other crew members were detained at the Krome Service Processing Center and departed via [REDACTED] flight 974 to [REDACTED] on February 22, 1990.

Pursuant to the documents contained in the A-file [REDACTED] the applicant was only detained by the DEA on February 21, 1990. He was turned over to the legacy INS and was subsequently removed from the United States the next day. The applicant has no drug convictions and there are no other known grounds of ineligibility. Therefore, the director's decision to deny the TPS application will be withdrawn.

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 met this burden.

ORDER: The appeal is sustained.