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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: [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: 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 [REDACTED] 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 [REDACTED] 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, [REDACTED] 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 [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 been convicted of a felony in the United States.

On appeal, the applicant asserts due to ignorance that he fraudulently acquired a driver's license. The applicant asserts, "anyway I already pay my dues for it. I went to jail for the first time in my life because of that." The applicant requests that his application be reconsidered.

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.

The Federal Bureau of Investigation report dated April 27, 2010, reflects that on October 29, 2009, the applicant was arrested by the [REDACTED] highway patrol in [REDACTED] for using a fraudulent name on a driver's license or ID application, a violation of [REDACTED] Statute section 322.212(5), a felony of the third degree, and possession of a fraudulent driver's license or ID application, a violation of [REDACTED] Statute section 322.212(1), a felony of the third degree.

In response to a notice dated April 30, 2010, which requested the applicant to submit the certified court disposition for the above arrest, the applicant submitted court documentation from the [REDACTED] County Circuit Court. The court documentation indicates that the applicant pled *nolo contendere* to violating [REDACTED] Statute section 322.212(1). Adjudication of guilt was withheld and the applicant was ordered to pay a fine and to serve 98 days in jail with a credit of 98 days for time served. A *nolle prosequi* was filed for the remaining charge. Case no. [REDACTED]

The applicant asserts that he paid his dues as he spent time in jail for the above offense. However, the applicant's compliance with the court's orders does not eliminate his conviction.

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 Immigration and Nationality Act.

The court disposition submitted reflects that the applicant pled *nolo contendere* to the offense and the judge ordered some form of punishment to the charge and a restraint on the applicant's liberty. Therefore, the applicant has been "convicted" of the offense for immigration purposes.

The applicant is 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). The applicant 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, the record reflects that on January 26, 1999, the applicant filed a Form I-589, Application for Asylum and for Withholding of Removal. A Form I-862, Notice to Appear, was issued and served on the applicant on March 10, 1999. A removal hearing was held on November 3, 1999, and the applicant was ordered removed from the United States *in absentia*. The applicant's application for relief from removal was deemed abandoned and denied for lack of prosecution. On February 4, 2010,¹ a Form I-220B, Order of Supervision, was issued that appears to be still in effect.

ORDER: The appeal is dismissed.

¹ The Form I-220B was inadvertently dated February 4, 2009.