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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]

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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 (AAO) 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 that he has been a person of good moral character since his arrest in 1998 and, therefore, he should not be barred from this relief. The applicant requested that all evidence of record be weighed on the issue of exceptional and extremely unusual hardship and his application be granted.

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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC § 802). Section 212(a)(2)(A)(i)(II) of the Act.

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 30, 2010, reflects:

- On September 4, 1998, the applicant was arrested by the [REDACTED] Police Department of [REDACTED] for possession of cocaine with intent to deliver and trespassing. Case no. [REDACTED]
- On December 29, 1998, the applicant was arrested by the [REDACTED] Police Department of [REDACTED] for trespassing after warning. Case no. [REDACTED]

Along with his TPS application, the applicant submitted the arrest/booking reports and complaint affidavits from the Sheriff's Office in [REDACTED] County, [REDACTED] relating to arrests on: 1) September 4, 1998, for possession of cocaine with intent to deliver and trespassing after warning; 2) December 29, 1998, for possession of cocaine with intent to deliver, trespassing and trespassing after warning; and 3) February 4, 1999, for possession of cocaine with intent to deliver/sell and trespassing.

The February 4, 1999, arrest relates to the initial arrest of September 4, 1998.

On July 8, 2010, a notice was issued which requested the applicant to submit certified court judgments for the arrests on September 4, 1998 and December 29, 1998. For his September 4, 1998 arrest, the applicant, in response, submitted court documentation from the [REDACTED] County Circuit Court, which reflected that on July 26, 1999, the applicant pled *nolo contendere* to possession of cocaine with intent to deliver/sell, a violation of [REDACTED] Statute section 893.13(1)(a)(1), a felony of the second degree, and trespassing, a violation of [REDACTED] Statute section 810.08(1), a misdemeanor of the second degree. Adjudication of guilt was withheld and the applicant was ordered to pay a fine and was placed on two years probation for the drug charge and 60 days for the trespassing charge. Case no. [REDACTED]

The maximum penalty for a conviction of a felony of the second degree is imprisonment for a period of not more than 15 years or by a fine of not more than \$10,000, or by both such fine and imprisonment. *See* Florida statute sections 775.082 and 775.083.

As cited above, a felony is any offense that is punishable by imprisonment for a term of more than one year, *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 Immigration and Nationality Act.

The court disposition reflects that the applicant pled *nolo contendere* to the offenses 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 offenses for immigration purposes.

The applicant is ineligible for TPS due to his felony conviction detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The applicant's statements 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 application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The applicant is also inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to his drug-related conviction. Therefore, the application must also be denied for this reason. There is no waiver available for inadmissibility under this section of the Act.

The applicant is also ineligible for TPS due to his failure to submit the requested certified court disposition in Case no. [REDACTED] necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Therefore, the application must also be denied for this reason.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.