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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:

SEP 07 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 \$585. 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 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 three misdemeanors in the United States.

On appeal, the applicant provides an explanation for each arrest and conviction. The applicant asserts that the offenses should not be considered to be misdemeanors as "none of these incidents were crimes of moral turpitude nor for purpose of definition of 8 CFR 244.1 carried an imprisonment for a maximum term of five days." The applicant requests that his application be reconsidered as the offenses were "unfortunate incidents of misunderstandings."

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.

On April 20, 2010, the applicant was requested to submit the court dispositions for his arrests on May 13, 2003 and December 5, 2009. The applicant, in response, provided the court dispositions, which revealed the following in the state of Florida:

1. On [REDACTED] 2003, the applicant was arrested by the [REDACTED] County Sheriff's Office and charged with making a false report, a misdemeanor of the first degree. On [REDACTED] 2003, the applicant pled *nolo contendere* to violating Florida Statute section 817.49. Adjudication of guilty was withheld and the applicant was ordered to pay a fine. Case no. [REDACTED]
2. On December 5, 2009, the applicant was arrested by the [REDACTED] County Sheriff's Office and charged with loitering/prowling, a violation of [REDACTED] Statute section 856.021, a misdemeanor of the second degree, and trespass in structure or conveyance occupied, a violation of [REDACTED] Statute section 810.08, a misdemeanor of the first degree. On February 25, 2010, the applicant pled *nolo contendere* to both violations. Adjudication of guilty was withheld and the applicant was ordered to pay a fine. Case no. [REDACTED]

The applicant's assertion, on appeal, that the offenses did not carry a maximum term of five days of imprisonment is without merit. The maximum penalty for a conviction of a misdemeanor of the first degree is imprisonment for a period of not more than a year or by a fine of not more than \$1000, or by both such fine and imprisonment. The maximum penalty for a conviction of a misdemeanor of the second degree is imprisonment for a period of not more than 60 days or by a fine of not more than \$500, or by both such fine and imprisonment. See Florida Statute sections 775.082 and 775.083.

As cited above, 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.*

On appeal, the applicant asserts, "[t]he 02/25/10 statutes are listed from one incident."

The fact that the offenses from the applicant's arrest on December 5, 2009 arose from a common scheme does not preclude them from being counted as separate offenses. The applicant was charged with two separate counts and he pled to separate offenses. *Black's Law Dictionary*, 353 (7th Ed., 1999) defines the term "count" to mean a separate and distinct claim in a complaint or similar pleading. It also indicates that the term "count" is used to signify the part of an indictment charging a distinct offense. Therefore, the applicant has been convicted of two separate and distinct offenses.

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if 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.

In the instant case, the court documents submitted reflect that the applicant pled *nolo contendere* to each charge, and the judge ordered some form of punishment to the charges above. Therefore, the applicant has been "convicted" of the misdemeanor offenses for immigration purposes.

The applicant is ineligible for TPS due to his three misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The applicant's statements made on appeal have been considered. Nevertheless, 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, it is noted the record reflects that on May 30, 2001, a Form I-862, Notice to Appear, was issued. A removal hearing was held on September 9, 2003 and the immigration judge (IJ)

ordered the applicant removed from the United States. The applicant appealed the IJ's decision before the Board of Immigration Appeals (BIA). On August 18, 2004, the BIA affirmed, without opinion, the IJ's decision. The applicant filed a motion to reopen, which was denied by the BIA on August 23, 2005. The applicant filed a second motion to reopen before the BIA, which was rejected on October 2, 2006.

ORDER: The appeal is dismissed.