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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 (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 the applicant had been convicted of two felonies and two misdemeanors in the United States.

On appeal, the applicant asserts that the allegations against him are "99% false." The applicant claims, "I did not commit the crime that I had being charged of which I believe and I know there are all false."

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 a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The record contains a certified court document from the Miami-Dade Circuit and County Courts, which reveals the following:

1. On March 22, 1995, the applicant was arrested for aggravated battery-pregnant, a violation of Florida Statute section 784.045(2)(b), a felony of the second degree. On August 14, 1995, the applicant pled *nolo contendere* to the offense. Adjudication of guilt was withheld and the applicant was placed on probation for 18 months and ordered to pay a fine. Case no. [REDACTED]

2. On January 17, 1999, the applicant was arrested for assault or battery. On February 8, 1999, the State Attorney's Office entered a *nolle prosequi* for this offense. Case no. [REDACTED]
3. On May 9, 1999, the applicant was arrested for aggravated stalking, stalking, assault, aggravated assault with a deadly weapon, and leaving the scene of an accident/property damage. On July 23, 1999, the applicant was convicted of aggravated assault with a deadly weapon, a violation of Florida Statute 784.021(1)(a), a felony of the third degree; stalking, a violation of Florida Statute section 784.048(2), a misdemeanor of the first degree; and hit and run leaving the scene of an accident/property damage, a violation of Florida Statute 316.061(1), a misdemeanor of the second degree. 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 document reflects that the judge ordered some form of punishment to the charge in number one above. Therefore, the applicant has been convicted of the offense for immigration purposes.

On appeal, the applicant asserts, in pertinent part:

I swear and certify under penalty of perjury that I am innocent from all those charges.

\* \* \*

When the authority charged me with those false allegations, they didn't have any tangible proof, they did that by words from my accuser, I believe that I deserve to be hear and believe also, by that I mean, I believe that I deserve someone to accept my words and believe because I am still a human being: I was and remain innocent.

The AAO is not the proper forum for disputing the validity of state convictions. Whether or not the applicant was provided with the opportunity to defend himself is not an issue for the AAO to decide.

The applicant is ineligible for TPS due to his two felony and two misdemeanor convictions detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). 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 most commonly accepted definition of a crime involving moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *Jordan v. De George*, 341 U.S. 223, reh'g denied, 341 U.S. 956 (1951). Aggravated assault is a crime involving moral turpitude. *Matter of Baker*, 15 I&N Dec. 50 (BIA 1974). Aggravated battery is also a crime involving moral turpitude. *Guillen-Garcia v. INS*, 999 F.2d 199 (7th Cir. 1993); *Matter of Goodalle*, 12 I&N Dec. 106 (BIA 1967). The applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to the convictions of these offenses. Therefore, the application must also be denied for this reason. There is no waiver available to an applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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.