

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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

M1

[REDACTED]

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: SEP 07 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:

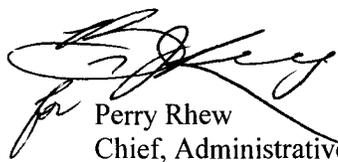
[REDACTED]

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 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 two felonies in the United States.

On appeal, the applicant asserts that the director arbitrarily denied his application without giving him the opportunity to file a waiver. The applicant requests that his application be reconsidered and approved.

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 record reveals that on January 24, 2008, the applicant was arrested by the Sheriff’s Office in Collier County, Florida and charged with possess counterfeit drivers license, a violation of Florida Statute section 322.212(1)(a), and attempt to give false name or information to obtain a drivers license, a violation of Florida Statute section 322.212(5)(a), both felonies of the third degree. On June 16, 2008, the applicant was convicted of both offenses. For violating Florida Statute section 322.212(1)(a), the applicant was sentenced to serve six months in the county jail. Case no. [REDACTED]

The applicant is ineligible for TPS due to his felony 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; however, there is no waiver available for this ground of ineligibility. 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 that the record reflects that a removal hearing was held on July 9, 2003, and the applicant was ordered removed from the United States. The applicant appealed the

Immigration Judge's (IJ) decision to the Board of Immigration Appeals. On January 21, 2005, the BIA affirmed, without opinion, the IJ's decision. The applicant filed a motion to reopen, which was denied by the BIA on April 22, 2005. On August 4, 2008, a Form I-205, Warrant of Removal/Deportation was issued. On December 10, 2008, a Form I-220B, Order of Supervision, was issued that appears to be still in effect.

ORDER: The appeal is dismissed.