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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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OFFICE: CALIFORNIA SERVICE CENTER DATE: SEP 16 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:

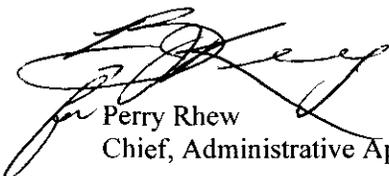
[REDACTED]

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 at least one felony in the United States.

On appeal, counsel asserts that driving with a revoked license is not a misdemeanor as they are not punishable for a period of five days or more. Counsel asserts that the applicant's sentence of 45 days does not count as a felony conviction.

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.

The record reveals the applicant's criminal history in the state of Florida as follows:

- On [REDACTED] the applicant was arrested by the Sheriff's Office of Palm Beach County for sex offense against a child.
- On [REDACTED], the applicant was arrested for driving while license is suspended-habitual offender.
- On [REDACTED], the applicant was arrested by the Sheriff's Office of Palm Beach County for driving while license is suspended – habitual offender.

On April 14, 2010, a notice was issued which advised the applicant to submit certified court dispositions for each arrest noted above. The applicant, in response, submitted court dispositions which revealed the following:

1. On May 20, 1996, the applicant pled guilty to and was convicted of violating Florida Statute section 800.04(3), lewd assault, a felony in the second degree. The applicant was sentenced to time served (45 days) and ordered to pay a fine. Case no. [REDACTED]
2. On July 16, 2003, the applicant pled *nolo contendere* to violating Florida Statute section 322.34(5), driving while license revoked-habitual offender, a felony of the third degree. Adjudication of guilt was withheld. The applicant was placed on probation for 18 months and ordered to pay a fine. The applicant subsequently violated his probation and on May 28, 2004, the applicant was ordered to pay a fine and was sentenced to serve 120 days in jail of which 50 days were credited for time served. Case no. [REDACTED].
3. On June 7, 2004, the applicant pled guilty to and was convicted of violating Florida Statute section 322.34(5), driving while license revoked-habitual offender, a felony of the third degree. The applicant was sentenced to serve 60 days in jail of which 40 days was credited for time served. Case no. [REDACTED].

Counsel's assertion on appeal is without merit. In the instant case, the applicant was convicted of violating Florida Statute section 322.34(5), which provides that any person whose driver's license has been revoked pursuant to section 322.264 (habitual offender) and who drives any motor vehicle upon the highways of the state while such license is revoked is guilty of a felony of the third degree.

The maximum penalty for a conviction of a felony of the third degree is imprisonment for a period of not more than five years or by a fine of not more than \$5000, or by both such fine and imprisonment. 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.*

Because the Florida courts could have sentenced the applicant to up to five years for his convictions in numbers 2 and 3, and up to fifteen years for his conviction in number one, it is concluded that he has been convicted of felonies for immigration purposes.

The applicant is ineligible for TPS due to three felony convictions. 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 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.