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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



M1

FILE:



OFFICE: NEBRASKA SERVICE CENTER

DATE:

SEP 16 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 Nebraska 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 Nebraska 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, Nebraska 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 the applicant had been convicted of a felony and four misdemeanors in the United States.

On appeal, the applicant asserts that he has been detained three times and released and arrested two times. The applicant asserts that the court documents previously presented failed to indicate a felony conviction. 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.

"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 reflects the applicant's criminal history in the state of Florida as follows:

1. On October 29, 2004, the applicant was arrested by the Orange County Sheriff's Office for operating a motor vehicle without a valid driver's license, a violation of statute 322.03(1), a misdemeanor of the second degree. On November 12, 2004, the applicant pled *nolo contendere* to the offense. Adjudication of guilty was withheld and the applicant was ordered to pay a fine. Case no. [REDACTED]
2. On June 1, 2005, the applicant was arrested by the Orange County Sheriff's Office for driving while license suspended/revoked, a violation of statute 322.34(2), a misdemeanor of the first degree. On June 22, 2005, the applicant

pled guilty to the offense. The applicant was ordered to pay a fine and was placed on supervised probation for 180 days. Case no. [REDACTED]

3. On November 26, 2007, the applicant was arrested by the Orange County Sheriff's Office for operating a motor vehicle without a valid driver's license, a violation of statute 322.03(1), a misdemeanor of the second degree. On December 12, 2007, the applicant pled guilty to the offense and was ordered to pay a fine. Case no. [REDACTED]
4. On June 13, 2008, the applicant was arrested by the Orange County Sheriff's Office for driving while license suspended/revoked/canceled, a violation of statute 322.34(2), a misdemeanor of the first degree. On July 2, 2008, the applicant pled guilty to the offense and was ordered to pay a fine. Case no. [REDACTED]
5. On July 10, 2009, the applicant was arrested by the Orange County Sheriff's Office for driving while license is revoked-habitual offender, a violation of statute 322.34(5), a felony of the third degree, and driving while license is suspended-habitual offender, a violation of statute 322.34(2)(b), a misdemeanor in the first degree. On August 27, 2009, the applicant pled *nolo contendere* to the felony charge. The remaining charge was *nolle prosequi*. The applicant was ordered to pay a fine and was placed on probation for one year. 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 disposition reflects that the applicant pled *nolo contendere* to the offense in number one above and the judge ordered some form of punishment to the charge. Therefore, the applicant has been "convicted" of the offense for immigration purposes.

A conviction of a misdemeanor of the second degree is punishable by up to 60 days in jail. *See* Florida statute 775.082(4)(b). A conviction of a misdemeanor of the first degree is punishable by up to one year in jail. *See* Florida statute 775.082(4)(a). As noted above, for immigration purposes, 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*. Therefore, the offenses in numbers one through four constitute misdemeanors for immigration purposes.

The applicant's assertion that he has not been convicted of a felony in number five is not supported by the record. The court documents clearly reflect that the applicant pled guilty to violating statute 322.34(5), a felony of the third degree. The court documents do not indicate

that the charge was reduced to a lesser offense. The applicant has not provided any credible evidence to dispute the court document. As noted above, for immigration purposes, 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*. Therefore, the offense constitutes a felony for immigration purposes.

The applicant is ineligible for TPS due to his one felony and four 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 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, while not the basis for the dismissal of this appeal, it is noted that record reflects that on August 30, 1999, a Notice and Order of Expedited Removal, Form I-860, was issued. On September 23, 1999, a Notice to Appear, Form I-862, was issued. On October 18, 2000, a removal hearing was held and the applicant was ordered removed from the United States. The applicant appealed the decision to the Board of Immigration Appeals (BIA). The BIA summarily dismissed the appeal on March 8, 2002. The applicant subsequently filed a motion, which was rejected by the BIA on May 12, 2005.

ORDER: The appeal is dismissed.