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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: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: SEP 29 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: 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 at least two misdemeanors in the United States.

On appeal, the applicant asserts that at the time of his arrest on August 9, 2005, he neither sought legal counsel nor understood the weight of the charges against him. The applicant requests "this court to remand, reverse or set aside under special circumstances the harsh decision" and to approve the TPS application.

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.

The record reflects that on August 8, 2005, the applicant was arrested by the Orlando Police Department in Florida and charged with resisting officer obstruct without violence, a violation of Florida statute 843.02, and trespassing, fail to leave property upon order by owner, a violation of Florida statute 810.09, both misdemeanors of the first degree. On August 9, 2005, the applicant was convicted of both offenses. The applicant was sentenced to serve two days in jail and ordered to pay a fine. [REDACTED]

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. See Florida statutes 775.082(4) and 775.083(1). 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.

The applicant's statements on appeal have been considered. The AAO, however, is not the proper forum for disputing the validity of state convictions. Whether or not the applicant was provided with the opportunity to seek legal counsel is not an issue for the AAO to decide.

The applicant is ineligible for TPS due to his two misdemeanor 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.

While not the basis for the dismissal of the appeal, it is noted that the record reflects the applicant filed a Form I-589, Application for Asylum and Withholding of Deportation, on March 29, 2001. A Form I-862, Notice to Appear, was served on the applicant on September 10, 2001. On October 21, 2002, a removal proceeding was held and the applicant's asylum application was denied and he was ordered removed from the United States. The applicant appealed the immigration judge's (IJ) decision to the Board of Immigration Appeals (BIA). On February 12, 2004, the BIA affirmed, without opinion, the IJ's decision.

ORDER: The appeal is dismissed.