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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
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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 she found that the applicant had failed to submit all of the requested court documentation relating to his criminal record.

On appeal, the applicant submits additional documentation relating to his criminal record.

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 AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record reveals the following offenses in the state of Florida

1. On July 24, 2009, the applicant was arrested by the Sheriff's Office in Broward County for hit and run, expired driver's license over four months and driving while license is suspended.
2. On November 25, 2009, the applicant was arrested by the Sheriff's Office in Broward County for hit and run and expired driver's license over four months.

On May 4, 2010, the director issued a notice requesting the applicant to submit certified court dispositions for all arrests. The applicant, in response, submitted court documentation from the Broward County Circuit Court, which reflects that the applicant was charged with leaving the scene of accident causing death or personal injury, a violation of Florida statute 316.027(1)(a), a

felony in the third degree, and driving while license is suspended, a violation of Florida statute 322.34(2)(a), a misdemeanor in the second degree. The applicant pled no contest to both charges. On January 5, 2010, adjudication of guilt was withheld and the applicant was placed on probation and ordered to pay a fine. [REDACTED]

On appeal, the applicant submits an additional certified court documentation relating to Case no. [REDACTED]. The applicant also submits court documentation from the Broward County Circuit Court, which indicates that no charges were filed for his arrest on July 24, 2009. Case [REDACTED]

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if 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.

In the instant case, the court documentation submitted reflects that the applicant pled no contest to violating Florida statute 316.027(1)(a), and the judge ordered some form of punishment to the charge above. Therefore, the applicant has been "convicted" of the offenses for immigration purposes.

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. *See* Florida statute 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.*

The applicant is ineligible for TPS due to his felony conviction detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

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 that a Form I-862, Notice to Appear, was served on the applicant on May 20, 1998. A removal hearing was held on March 23, 1999, and the applicant was ordered removed from the United States. The applicant appealed the decision of the immigration judge (IJ) to the Board of Immigration Appeals (BIA). On June 30, 1999, the BIA found the appeal to have been untimely filed and affirmed the IJ's decision.

ORDER: The appeal is dismissed.