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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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

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 two misdemeanors in the United States.

On appeal, the applicant asserted, "the court failed to explain my rights and the consequences at the time I entered the Plea on the second misdemeanor case." The applicant asserted that he is currently appealing that case. The applicant indicates at Part 2 on the appeal form that a brief and/or additional evidence would be submitted to the AAO within 30 days.<sup>1</sup> However, more than 60 days later, no additional evidence has been presented by the applicant.

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 contains court documentation from the Orange County Circuit Court of Florida, which reflects the following:

1. On May 14, 2001, the applicant pled *nolo contendere* to violating Florida statute 320.02, failure to register motor vehicle, a misdemeanor in the second degree. Adjudication of guilt was withheld and the applicant was ordered to pay a fine and serve three days in jail. [REDACTED]
2. On April 22, 2002, the applicant pled *nolo contendere* to violating Florida statute 320.131(3), unlawful/improper use of temporary tag, a misdemeanor of the second degree. Adjudication of guilt was withheld and the applicant was ordered to pay a fine. [REDACTED]

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<sup>1</sup> Every appeal submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. 8 C.F.R. § 103.2(a)(1). The Form I-290B instructs the applicant to submit a brief and additional evidence to the AAO within 30 days of filing the appeal.

3. On November 22, 2002, the applicant pled *nolo contendere* to violating Florida statute 322.34(2), driving while license is suspended/revoked, a misdemeanor in the first degree. Adjudication of guilt was withheld and the applicant was ordered to pay a fine and was placed on supervised probation. Case no. [REDACTED]
4. On April 28, 2003, the applicant pled *nolo contendere* to violating Florida statute 322.32(1), unlawful use or possession of improper license, a misdemeanor of the second degree. Adjudication of guilt was withheld and the applicant was ordered to serve one day in jail and pay a fine. [REDACTED]
5. On May 15, 2007, the applicant pled *nolo contendere* to violating Florida statute 322.03(1), operating a motor vehicle without valid driver license, a misdemeanor of the second degree. The applicant was ordered to serve one day in jail and pay a fine. [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.

The court documentation reflects that the applicant pled *nolo contendere* to the charges noted above and the judge ordered some form of punishment to each charge. Therefore, the applicant has been "convicted" of these offenses for immigration purposes.

The Board of Immigration Appeals held that a conviction vacated for failure of the trial court to advise the alien defendant of the possible immigration consequences of a guilty plea is no longer a valid conviction for immigration purposes. *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006).

In the instant case, the applicant has not provided any credible evidence to support his assertion that he had not been advised of the possible immigration consequences of a guilty plea by the trial court. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO concludes that the misdemeanor convictions continue to effect immigration consequences.

The applicant is ineligible for TPS due to his 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 that a Form I-862, Notice to Appear, was issued on January 21, 1999. A removal hearing was held on September 21, 2000, and the alien was ordered removed *in absentia*. On May 9, 2003, a Form I-130, Petition for Alien Relative, was filed on behalf of the applicant. On May 4, 2005, the Form I-130 was denied due to lack of prosecution. On July 15, 2004, a Form I-205, Warrant of Removal/Deportation, was issued.

**ORDER:** The appeal is dismissed.