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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:



OFFICE: CALIFORNIA SERVICE CENTER DATE:

SEP 29 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 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 two misdemeanors in the United States.

On appeal, the applicant asserts that he does not have two misdemeanor convictions as he did not spend any time in jail for the theft violation and only served two days in jail for his driving under the influence conviction. The applicant asserts that he has complied with all the court's requirements. 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).

"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 August 19, 2002, the applicant was arrested by the North Miami Beach Police Department for trespass.
2. On November 14, the applicant was arrested for retail theft.
3. On March 14, 2008, the applicant was arrested by the Pembroke Pines Police Department for driving under the influence.

On April 15, 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 Howard County Court reflecting that on October 22, 2008, the applicant pled no contest to driving under the influence of alcohol, a violation of Florida statute 316.193(1), a misdemeanor. The applicant was

ordered to pay a fine, serve 50 hours of community service and was placed on probation for one year. Case no. [REDACTED]

- Court documentation from the Miami-Dade Circuit and County Courts reflecting that on January 22, 2004, the adjudication of guilt was withheld for violating Florida statute 812.014, petit larceny, theft, a misdemeanor of the second degree. The applicant was ordered to pay a fine. Case no. [REDACTED]
- Court documentation from the Miami-Dade Circuit and County Courts reflecting that on August 19, 2002, the applicant was convicted of trespass, a violation of Florida statute 810-09(2)(a), a misdemeanor of the first degree. The applicant was ordered to pay a fine. 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 documentation for number two above reflects that the judge ordered some form of a penalty on the applicant's liberty. Therefore, the applicant has been convicted of the offense for immigration purposes.

A first conviction of driving under the influence is punishable by up to a fine of \$1000 and by imprisonment of not more than six months. *See* Florida statute 316.193(2)(a). The maximum penalty for a conviction of a misdemeanor of the second degree is imprisonment for a period of not more than 60 days in jail or by a fine of not more than \$500, or both such fine and imprisonment. 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*. Therefore, the above offenses constitute convictions for immigration purposes.

The applicant's statements on appeal have been considered. However, mere compliance with the courts' orders neither alleviates the applicant of any convictions that had occurred nor dismisses or expunges any convictions.

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 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.



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**ORDER:** The appeal is dismissed.