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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 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 a felony in the United States.

On appeal, the applicant asserts that the director's decision is in error as the final disposition of the case was *nolle prosequi*.

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.

The record reveals the following offenses in the state of Florida:

- On July 15, 2004, the applicant was arrested by the Sheriff's Office in Orange County for aggravated battery, a violation of Florida statute 784.045, a felony in the second degree.
- On June 20, 2005, the applicant was arrested by the Sheriff's Office in Orange Country for aggravated battery, a violation of Florida statute 784.045, a felony in the second degree.

The court documentation in the record reflects that on July 16, 2004, the applicant was charged with felony battery—great bodily harm, a violation of Florida statute 784.041, a felony in the third degree. On January 31, 2005, the applicant pled *nolo contendere* to the felony offense. Adjudication of guilt was withheld and the applicant was sentenced to serve two days in jail and was ordered to pay a fine. Case no. [REDACTED]

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 statutes 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 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 Immigration and Nationality Act.

The court disposition reflects that the applicant pled *nolo contendere* to the offense and the judge ordered some form of punishment to the charge and a restraint on the applicant's liberty. Therefore, the applicant has been "convicted" of the offense for immigration purposes.

On appeal, the applicant submits certified court documentation from the Orange County Circuit Court in Case no. [REDACTED] indicating that the applicant was arrested on [REDACTED] 2005, for aggravated battery on a pregnant person, a violation of Florida statute 784.045, a felony in the second degree. On [REDACTED] 2005, the assistant state attorney indicated that the case was not suitable for prosecution.

The applicant's statement on appeal is without merit. The court documentation submitted on appeal relates to an arrest that occurred 4 months and 20 days after the applicant's felony conviction of [REDACTED] 2005. The applicant's arrest on [REDACTED] 2005, does not relate to his arrest on [REDACTED] 2004.

The applicant is ineligible for TPS due to his felony conviction. 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, the record reflects that a Form I-862, Notice to Appear, was served on the applicant on February 3, 2000. The applicant filed a Form I-589, Application for Asylum and Withholding of Deportation, on July 7, 2000. On May 15, 2001, a removal hearing 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 July 22, 2004, the BIA affirmed, without opinion, the IJ's decision.

ORDER: The appeal is dismissed.