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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE:  
[WAC 10 901 16253]

IN RE: Applicant: [REDACTED]

APR 01 2011

APPLICATION: Application for Temporary Protected Status under Section 244 of the  
Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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 \$630. 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 three felonies in the United States.

On appeal, counsel for the applicant asserts that he does not discount the applicant's offenses with the law, but believes that the director should have offered her the possibility to file a waiver of inadmissibility under section 212(h) of the Act, despite her convictions.

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 Federal Bureau of Investigation report reflects the following offenses in the state of Florida:

1. On August 5, 1996, the applicant was arrested by the Miami-Dade Police Department for aggravated battery on a police officer, resisting an officer, and trespassing.
2. On August 23, 1999, the applicant was arrested by the Lauderhill Police Department for failure to register vehicle.
3. On August 30, 1999, the applicant was arrested by the Miami-Dade Police Department for battery.
4. On October 26, 2001, the applicant was arrested by the Sheriff's Office of Broward County for bail-secured bond.
5. On November 1, 2001, the applicant was arrested by the Miami-Dade Police Department for battery.

6. On April 16, 2003, the applicant was arrested by the Sheriff's Office of Collier County for probation violation.

On August 3, 2010, the applicant was requested to submit certified judgment and conviction documents from the courts for *all* arrests. The applicant, in response, submitted:

- Court documentation for number one, which reflects that on November 13, 1997, the applicant pled guilty to violating Florida Statutes 784.07 and 784.03, battery on a law enforcement officer, a felony of the third degree; Florida Statutes, 784.05, 784.07, 775.0823 and 775.087, aggravated battery on a law enforcement officer, a felony of the first degree; and Florida Statute 819.09(2)(b), trespass on property other than structure/conveyance, a misdemeanor of the first degree. The offense of resisting an officer was dismissed. Case no. 96-24875.
- A complaint affidavit dated December 1, 1997, from the Sheriff's Office of Broward County and court documentation in Case no. 98.00896CF, indicating that the applicant was arrested for aggravated battery, a violation of Florida Statute 784.045, a felony of the second degree. On July 16, 2001, the applicant pled nolo contendere to the offense.
- A certified document from the Broward County Court dated September 1, 2010, indicating that the case in 99032485TC10A had been closed.

The director determined that the applicant had been convicted of three felonies and a misdemeanor, and denied the application on December 13, 2010.

Counsel's statements on appeal have been considered. However, TPS proceedings are separate and distinct from adjustment of status proceedings. There is no waiver available, even for humanitarian reasons, of the requirements stated above. Furthermore, counsel's assertion on appeal that the applicant's Form I-485 application is still pending is not supported by the record. On June 17, 2009, the Form I-485 was denied.

The applicant is ineligible for TPS due to her three felonies. 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 application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The applicant has failed to provide any evidence revealing the final court dispositions of her arrests in numbers two, four, five and six above. The applicant is ineligible for TPS because of her failure to provide information necessary for the adjudication of her application. 8 C.F.R. § 244.9(a). Therefore, the TPS application must be denied on this basis as well.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

**ORDER:** The appeal is dismissed.