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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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DATE: **APR 20 2011** Office: CALIFORNIA SERVICE CENTER

FILE: WAC 11 900 86576

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 \$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 a felony in the United States.

On appeal, the applicant asserts that her life was threatened in Haiti and, therefore, she departed her native country with a passport she received from a friend of her uncle. The applicant asserts, “[m]y mother filed an application in my behalf since I was sixteen years of age, wich [sic] was approved; but I could not have waited for immigration to give me my travel documents.” The applicant requests that due to the conditions in her native country, Haiti, her 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).

“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 reflects on December 29, 2002, the applicant attempted to enter the United States with a fraudulent U.S. passport. On January 30, 2003, the applicant was charged with use of a false and altered passport and false claim to U.S. citizenship. On April 24, 2003, the applicant was convicted in the United States District Court, Southern Division of Florida, of use of an altered passport, a violation of 18 U.S.C. § 1543, a felony. The remaining charge was dismissed. Case no. [REDACTED]

The applicant is ineligible for TPS due to her felony conviction. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). There is no waiver available, even for humanitarian reasons, of the requirements stated above. 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).

Title 18 U.S.C. § 1543 provides, in pertinent part, that:

Forgery or false use of passport

Whoever falsely makes, forges, counterfeits, mutilates, or alters any passport or instrument purporting to be a passport, with intent that the same may be used; or

Whoever willfully and knowingly uses, or attempts to use, or furnishes to another for use any such false, forged, counterfeited, mutilated, or altered passport or instrument purporting to be a passport, or any passport validly issued which has become void by the occurrence of any condition therein prescribe invalidating the same.

Any crime involving fraud is a crime involving moral turpitude. *Burr v. INS*, 350 F.2d 87 (9th Cir. 1965); *cert. denied*, 383 U.S. 915 (1966). However, in *Matter of Serna*, 20 I&N Dec. 579 (BIA 1992), the Board of Immigration Appeals addressed whether simple, knowing possession of illegal documents constitutes morally turpitudinous conduct, and held, “the crime of possession of an altered immigration document with the knowledge that it was altered, but without its use or proof of any intent to use it unlawfully, is not a crime involving moral turpitude.”

Conversely, a person may be convicted under the same section with intent to use the fraudulent passport, which conduct involves moral turpitude. In the instant case, the applicant willfully and knowingly used the fraudulent U.S. passport to gain admission into the United States. Therefore, the conviction for this offense renders her inadmissible under section 212(a)(2)(A)(i)(I) of the Act. There is no waiver available for inadmissibility under this section of the Act. Consequently, the TPS application must be denied on this basis as well.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal. 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 this appeal, it is noted that on June 19, 2003, the applicant filed a Form I-589, Application for Asylum and Withholding of Removal. On September 23, 2005, a removal hearing was held and the applicant’s asylum application was denied for lack of persecution and she was ordered removed from the United States *in absentia*.

**ORDER:** The appeal is dismissed.