

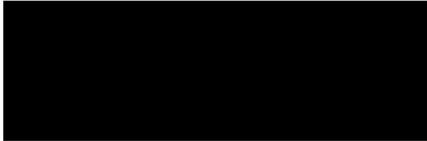
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



M1

DATE: OFFICE: CALIFORNIA SERVICE CENTER

APR 27 2011

FILE: [REDACTED]
[WAC 10 900 93197]

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 \$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 misdemeanors in the United States.

On appeal, the applicant asserts that the director's decision is in error "as there is no 12th Circuit Court in Fort Lauderdale, Florida." The applicant also asserts that the director failed "to show that these 3 counts were not transitionally related and therefore pertain to one transaction."

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 Federal Bureau of Investigation report dated June 22, 2010, reflects the following offenses in the state of Florida:

- On April 6, 2009, the applicant was arrested by the Sheriff's Office of Broward County, Florida for three counts of illegal/fraudulent use of credit cards.
- On August 18, 2009, the applicant was arrested by the Fort Lauderdale Police Department for operating vehicle unsafe/improper equipment and expired driver's license over four months.

On June 23, 2010, the applicant was requested to submit certified judgment and conviction documents for all arrests. The applicant, in response, provided:

1. A complaint affidavit dated April 6, 2009, regarding the applicant's arrest for petit larceny. Court documentation from the Seventeenth Judicial Circuit Court of Broward County, which indicated that the applicant was charged with one count of violating Florida Statute 812.014(2)(e), petit larceny, misdemeanor in the first degree, and two counts of violating Florida Statute 812.04(3)(a), petit

larceny, misdemeanor of the second degree. On January 22, 2010 the applicant pled no contest to each charge. Adjudication of guilt was withheld and the applicant was placed on probation for one year for count one and for six months for the remaining two counts. The applicant was ordered to pay restitution and court cost. [REDACTED]

2. A complaint affidavit dated August 18, 2009, regarding the applicant's arrest for petit theft, driving while license has expired more than four months and operating a vehicle unsafe/improper equipment. Court documentation from the Seventeenth Judicial Circuit Court of Broward County, which indicated that on February 23, 2010, the applicant was charged with driving while license has been expired for more than four months, a violation of Florida Statute section 322.03(5), a misdemeanor of the second degree. Adjudication of guilt was withheld and the applicant was ordered to pay a fine. Case no. 09022565TC10A.

The applicant's assertion that the offenses in number two above arose in a single occasion and, therefore, he was convicted of a single misdemeanor offense, cannot be accepted. The fact that the offenses arose from a common scheme does not preclude them from being counted as separate offenses. The applicant was charged with three separate counts and he pled no contest to separate offenses. *Black's Law Dictionary*, 401 (9th Ed., 2009) defines the term "count" to mean a separate and distinct claim in a complaint or similar pleading. It also indicates that the term "count" is used to signify the part of an indictment charging a distinct offense. Therefore, the applicant has been convicted of three separate and distinct offenses.

The director, in denying the application, inadvertently noted that the applicant had been convicted in the "12th Circuit Court – Fort Lauderdale, Florida." This was a harmless error by the director, which did not affect the outcome of her decision and has not prejudiced the applicant. The fact that the applicant was convicted of at least two misdemeanors renders him ineligible for TPS. 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 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 removal hearing was held on October 2, 2008, and the applicant was granted voluntary departure from the United States on or before December 1, 2008. The applicant appealed the immigration judge's decision to the Board of Immigration Appeals (BIA). On September 30, 2009, the BIA dismissed the appeal, and granted the alien voluntary departure within 60 days from the date of the order.

ORDER: The appeal is dismissed.