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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]
[WAC 10 900 48947]

OFFICE: CALIFORNIA SERVICE CENTER DATE: FEB 03 2011

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 a felony in the United States.

On appeal, the applicant asserts that the charges were dismissed on the government's motion.

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 AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record reflects that on November 29, 2001, the applicant was charged with **two** counts of false statements to a federal agent, a violation of Title 18 U.S.C. section 1001; one count of fraud and misuse of visas/permits, a violation of Title 18 U.S.C. section 1546; one count of fraud in communication with identification documents, a violation of Title 18 U.S.C. section 1028(a); and one count of misuse of social security number, a violation of Title 42 U.S.C section 408.

In response to a notice dated July 20, 2010, which requested the applicant to submit certified court documentation for the above charges, the applicant provided a photocopy of the criminal docket, which reflects that on January 30, 2002, in the United States District Court, Middle District of Florida, the applicant pled guilty to and was convicted of one count of false statements to a federal agent, a felony. The applicant was sentenced to serve time in jail, ordered to pay a fine, and was placed on probation for three years. The remaining charges were dismissed. Case no. 3:01-CR-325-J-25HTS/01-CR-325-ALL.

On appeal, the applicant submits an additional copy of the criminal docket for the above case. Contrary to the applicant's assertion, only four of the five charges were dismissed. The court documentation clearly reflects that the applicant was convicted of one count of false statement to a federal agent.

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 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 a removal hearing was held on March 7, 2003, and the applicant was ordered removed from the United States. The applicant appealed the immigration judge's decision to the Board of Immigration Appeals (BIA). On February 18, 2005, the BIA dismissed the appeal. A Form I-205, Warrant of Removal/Deportation, was issued on November 15, 2005.

ORDER: The appeal is dismissed.