

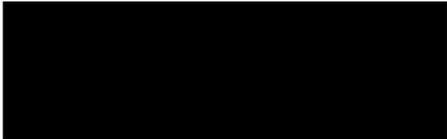
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



M<sub>1</sub>

FILE:



OFFICE: CALIFORNIA SERVICE CENTER DATE:

FEB 03 2011

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 it was determined that the applicant had been convicted of a felony and a misdemeanor in the United States.

On appeal, the applicant asserts that he was not arrested on January 11, 2007 or on February 25, 2010. The applicant submits certified court documents relating to his arrests on March 26, 2006 and in July 2008. The applicant requests that his 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.

"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 (FBI) report dated April 7, 2010, reflects that on March 26, 2006, the applicant was arrested by the Margate Police Department in Florida for driving while license is suspended – habitual offender, a violation of Florida Statute section 322.34(5), a felony of the third degree.

The FBI report also reflects that on July 20, 2008, the applicant was arrested by the Sheriff's Office of Broward County, Florida of driving while license is suspended – habitual offender, a violation of Florida Statute section 322.34(5), a felony of the third degree, and driving while license is suspended, a violation of Florida Statute section 322.34(2)(a), a misdemeanor of the second degree.

On May 18, 2010, a notice was issued requesting the applicant to submit certified court documents of the final dispositions for all arrests. The applicant, in response, provided:

- Court documentation in Case no. [REDACTED] regarding his arrest on July 20, 2008. The court document indicates that the applicant was charged with driving while license is suspended/revoked, a violation of Florida Statue section 322.34(2)(a), a misdemeanor in the second degree, and driving while license suspended – habitual offender, a violation of Florida Statute section 322/34-5, a felony in the third degree. The final dispositions of these charges were not submitted.
- Court documents relating to his March 26, 2006 arrest, which reflects that on January 11, 2007, the felony offense was amended to driving while license suspended/cancelled/revoked – 2<sup>nd</sup> offense, a violation of Florida Statue section 322.34(2)(b), a misdemeanor of the first degree. On the same date, the applicant was convicted of violating Florida Statue section 322.34(2)(b). Case no. 06005084CF10A.
- Court documentation (Case no. [REDACTED] for a conviction on February 25, 2010 of possession of cocaine that was attached to Case no. [REDACTED]

On July 20, 2010, a second notice was issued requesting the applicant to submit the certified court documents of the final dispositions for all arrests. The applicant, in response, submitted:

- An additional certified copy of the court documentation in Case no. [REDACTED] regarding his arrest on July 20, 2008. Once again, the final dispositions of the charges were not submitted.
- The arrest report of March 26, 2006, indicating that the driver's license of the applicant had been suspended three times; one for being a habitual traffic violator.
- An additional copy of the court documentation in Case no. [REDACTED] regarding his arrest on March 26, 2006.
- A photocopy of a Certificate of Records Search certified September 1, 2010, by deputy clerk of the 17<sup>th</sup> Judicial Circuit Court of Broward County, Florida. The certificate indicates that a search of its records in the felony division for the past one year revealed no record of any charges against the applicant.

On appeal, the applicant presents:

- A Certificate of Records Search certified August 25, 2010, by the deputy clerk of the 17<sup>th</sup> Judicial Circuit Court of Broward County, Florida. The certificate indicates that a search of its records in the felony division for the past one year revealed no record of any charges against the applicant.
- An additional certified copy of the court document in [REDACTED] regarding his arrest on July 20, 2008. Once again, the final dispositions of these charges were not provided.
- An additional certified copy of the court documentation in Case no. [REDACTED] regarding his arrest on March 26, 2006.

On November 24, 2010, the AAO sent a notice to the applicant which informed him of inconsistent information contained within the record. The applicant was advised that the arrest report of March 26, 2006, indicated that his driver's license had been suspended three times; one for being a habitual traffic violator. However, the requested court depositions of these offenses were never submitted.

The applicant was advised that the court documentation in Case no. [REDACTED] regarding his arrest on July 20, 2008, was incomplete as the final dispositions of the charges were not submitted.

The applicant was also advised that he had submitted the court disposition which reflected a possession of cocaine conviction on February 25, 2010, in Case no. [REDACTED]

The applicant was granted 30 days in which to provide: 1) credible evidence from the court or district attorney's office indicating that Case no. [REDACTED] did not relate to him; 2) certified complete court documentation in Case no. [REDACTED]; and 3) certified court documents addressing the final dispositions of his three driving while license suspended offenses that occurred prior to March 26, 2006.

The applicant, in response, asserts that the court documentation regarding the drug conviction on February 25, 2010, in Case no. [REDACTED] does not relate to him. As evidence, the applicant submits the original Certificate of Records Search certified September 1, 2010, by deputy clerk of the 17<sup>th</sup> Judicial Circuit Court of Broward County, Florida indicating that a search of its records in the felony division for the past one year revealed no record of any charges against the applicant. Therefore, the director's finding regarding this conviction will be withdrawn.

The applicant asserts, "I have been arrested during two times for Driving while license revoked;" March 26, 2006 and July 20, 2008. The applicant provides an additional copy of the court documentation in Case no. [REDACTED]

The evidence of record reflects that on January 11, 2007, the applicant was convicted of violating Florida Statute section 322.34(2)(b), which relates to a **second** conviction. This fact

coupled with the arrest report of March 26, 2006, indicating the driver's license of the applicant had been suspended three times severely undermines the applicant's assertion that his first arrest occurred on March 26, 2006.

It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies.

The applicant has not provided any credible evidence to dispute the arrest report of March 26, 2006. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

As noted above, the applicant asserts that he was arrested for driving while license is revoked on July 20, 2008. However, to date, none of the court documentation provided by the applicant reveals the final outcome of this arrest.

The applicant is ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). 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.