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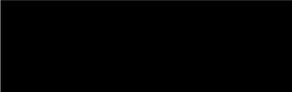
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



ML

FILE:  OFFICE: CALIFORNIA SERVICE CENTER DATE:

IN RE: Applicant: 

FEB 03 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: 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 she found the applicant inadmissible under section 212(a)(2)(C) of the Act.

On appeal, the applicant asserts that he has paid for his previous misdeed as he spent over four years in jail, he was removed from the United States, and he resided outside of the United States for over ten years prior to reentering. The applicant asserts that although the charges are still on record "after serving all the required time, it is believable that 'Double Jeopardy' is a fact in this case."

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.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

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

The record reflect that on February 18, 1987, the applicant was arrested by the Sheriff's Office of Orange County, Florida and subsequently charged with knowingly sell, deliver or possess 28 grams or more of cocaine or a mixture containing cocaine, a substance controlled by Florida Statute 893.03(2)(a)(4). On July 11, 1987, in the Circuit Court for the Ninth Judicial Circuit of Orange County, Florida, the applicant was convicted of trafficking in cocaine (28 grams or more but less than 200 grams), a violation of Florida Statute 893.135(1)(b)(1)/893.03(2)(a)(4), a felony in the first degree. The applicant was ordered to pay a fine of \$52,500 and sentenced to serve four and a half years in prison with credit for 92 days time served. Case [REDACTED]

The director, in denying the application, noted that based on the applicant's arrest, there was sufficient reasonable, substantial and probative evidence to support a finding that he is an alien who is or has been an illicit trafficker in a controlled substance or is or has been a known assister, abettor, conspirator, or colluder with others in the illicit trafficking of a controlled substance.

The applicant's statements on appeal have been considered. However, a time limitation is not provided for convictions of drug-related offenses to applicants for TPS under section 244 of the Act, and as provided in 8 C.F.R. § 244. The applicant must meet the eligibility requirements at the time the application is filed, as well as at the time the appeal is adjudicated.

The applicant is inadmissible under section 212(a)(2)(C) of the Act due to his drug trafficking offense. There is no waiver available for inadmissible under this section of the Act. 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 (9th 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 is also ineligible for TPS due to his 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 under this section of the Act. Therefore, the application must also be denied for this reason.

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.

ORDER: The appeal is dismissed.