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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] OFFICE: CALIFORNIA SERVICE CENTER DATE:

FEB 08 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 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 his conviction should be treated as a misdemeanor because he did not serve even a week in jail. 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.

The Federal Bureau of Investigation report dated July 1, 2010, reflects the following offenses in the state of Florida:

1. On March 20, 1998, the applicant was arrested by the Sheriff's Office of Palm Beach County for purchase of cocaine, a violation of Florida Statute 893.13.
2. On April 24, 2000, the applicant was arrested by the Sheriff's Office of Palm Beach County for failure to appear for felony offense, a violation of Florida Statute 842.15(1)(a).

On July 12, 2010, a notice was issued requesting the applicant to submit certified court dispositions for all arrests. The applicant, in response, submitted court documentation from the Circuit Court of the Fifteenth Judicial Circuit for Palm Beach County, which indicated that on November 16, 1998, the applicant was charged with attempted purchase of cocaine., a violation of Florida Statutes 777.04(1) and 893.13(2)(a), a felony of the third degree. On May 1, 2000, the applicant pled guilty to the charge. Adjudication of guilt was withheld and the applicant was ordered to pay a fine and was placed on probation for one year. Case no. [REDACTED]

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien

guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

The court disposition submitted reflects that the applicant pled guilty to the offense and the judge ordered some form of punishment to the charge and a restraint on the applicant's liberty. Therefore, the applicant has been "convicted" of the offense for immigration purposes.

The maximum penalty for a conviction of a felony of the third degree is imprisonment for a period of not more than five years or by a fine of not more than \$5000, or by both such fine and imprisonment. *See* Florida Statute sections 775.082 and 775.083.

As cited above, a felony is any offense that is punishable by imprisonment for a term of more than one year, *regardless of the term such alien actually served, if any*. Therefore, the above offense constitutes a felony for immigration purposes.

The applicant is 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, 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.

Finally, while not the basis for the dismissal of the appeal, it is noted that the record reflects that an exclusion hearing was held on November 30, 1994, and the applicant was ordered excluded and deported from the United States. The applicant appealed the immigration judge's decision to the Board of Immigration Appeals (BIA). On April 28, 1995, the BIA summarily dismissed the appeal.

ORDER: The appeal is dismissed.