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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

[REDACTED]

M₁

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:

[REDACTED]

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 two or more misdemeanors in the United States.

On appeal, the applicant asserts, “[t]he arrest in this case did not result in convictions. The Judge withheld the convictions. Also, my rights were violated because I was not properly represented by the public defender who never advised me that this would cause immigration problems.”

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 Federal Bureau of Investigation report dated July 2, 2010, reflects the following offenses in the state of Florida:

1. On March 22, 1986, the applicant was arrested by the Delray Beach Police Department for disorderly conduct. [REDACTED]
2. On December 29, 1987, the applicant was arrested by the Delray Beach Police Department for assault-battery on spouse
3. On March 30, 1988, the applicant was arrested by the Sheriff's Office of Palm Beach County for aggravated assault – weapon.
4. On May 29, 1989, the applicant was arrested by the Delray Beach Police Department for aggravated assault – weapon – battery.
5. On November 14, 1989, the applicant was arrested by the Sheriff's Office of Palm Beach County for aggravated assault – weapon – with a motor vehicle, and failure to appear for a battery charge.
6. On May 27, 1993, the applicant was arrested by the Sheriff's Office of Palm Beach County for aggravated assault – weapon.
7. On May 28, 1993, the applicant was arrested by the Sheriff's Office of Palm Beach County for aggravated assault – weapon.

8. On January 19, 1997, the applicant was arrested by the Sheriff's Office of Palm Beach County for domestic battery.
9. On November 2, 1998, the applicant was arrested by the Sheriff's Office of Palm Beach County for failure to appear for a driving while license is suspended/canceled/revoked violation.
10. On April 1, 2003, the applicant was arrested by the Florida Highway Patrol in Fort Lauderdale for resisting arrest and driving while license is suspended.
11. On June 16, 2005, the applicant was arrested by the Sheriff's Office of Palm Beach County for failure to appear.

On May 12, 2010, a notice was issued requesting the applicant to submit certified judgment and conviction documents from the courts for all arrests. The applicant, in response, provided:

- [REDACTED], indicating that on or about March 18, 1985, the applicant was arrested for disorderly conduct, a violation of Florida Statute 877.03, a misdemeanor. On March 27, 1985, the applicant was charged with this offense. The court documentation does not indicate a final disposition. Therefore, it is not known if this arrest relates to number one above, which occurred approximately a year later.
- For number two, court documentation indicating that on May 13, 1988, the applicant pled no contest to battery on spouse, a violation of Florida Statute 901.15. Adjudication of guilt was withheld and the applicant was ordered to pay a fine and was placed on probation for six months. [REDACTED]
- For number three, court documentation in Case no. [REDACTED] indicating that on March 31, 1988, a felony charge of aggravated assault was reduced to a misdemeanor offense, and prosecuted under [REDACTED]. On June 10, 1989, the applicant was convicted of improper exhibition of a dangerous weapon, a violation of Florida Statute, 790.10. The applicant was ordered to pay a fine and was placed on probation for three months. Case no. [REDACTED]
- For numbers four and five, court documentation indicating on November 14, 1989, the applicant was arrested for failure to appear for sentencing and restitution for a misdemeanor battery conviction, a violation of Florida Statute 901.11. On December 15, 1989, the applicant pled no contest to battery, a violation of Florida Statute 784.03. Adjudication of guilt was withheld and the applicant was ordered to pay a fine and was placed on probation. [REDACTED]. Court documentation indicating that on March 15, 1990, a *nolle prosequi* was entered for the aggravated assault with a deadly weapon/motor vehicle. [REDACTED]

- For six and seven, court documentation in [REDACTED] indicating that on July 7, 1993, 'Disposition not filed.'
- For number eight, court documentation indicating that on or about January 8, 1998, the applicant was found not guilty for domestic battery. [REDACTED]
- For number nine, court documentation indicating that a *nolle prosequi* was entered for failure to appear for driving while license suspended/canceled/revoked. [REDACTED]
- For number ten, court documentation indicating that on October 3, 2003, the applicant pled no contest to disobeying an officer/fire official, a violation of Florida Statute 316.072(3), and operating a motor vehicle without a valid driver's license, a violation of Florida Statute 322.03(1), both misdemeanors of the second degree. Adjudication of guilt was withheld and the applicant was ordered to pay a fine for each conviction. [REDACTED]
- For number eleven, an arrest warrant from the Palm County Criminal Division for failure to appear for arraignment on January 13, 2004, for driving while license is suspended/canceled/revoked, and expired registration over six months. A Booking Card dated June 17, 2005, from the Palm Beach Sheriff's Office, indicating the applicant was arrested for failure to appear for misdemeanor offense. Court documentation indicating that on October 3, 2005, a *nolle prosequi* was entered for each offense. [REDACTED]

The applicant's statements on appeal have been considered. However, 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 Immigration and Nationality Act.

The court dispositions reflect that the applicant entered a plea of no contest to the offenses and the judge ordered some form of punishment to each charge and a restraint on the applicant's liberty. Therefore, the applicant has been "convicted" of the misdemeanor offenses for immigration purposes.

The Board of Immigration Appeals (BIA) held that a conviction vacated for failure of the trial court to advise the alien defendant of the possible immigration consequences of a guilty plea is no longer a valid conviction for immigration purposes. *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006).

In the instant case, the applicant has not provided any credible evidence to support his assertion that he had not been advised of the possible immigration consequences of a guilty plea by his representative or trial court. 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)). The AAO concludes that the misdemeanor convictions continue to effect immigration consequences.

The applicant is ineligible for TPS due to his misdemeanor convictions. 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 Form I-862, Notice to Appear, was issued on April 30, 2003. A removal hearing was held on November 20, 2007, and the applicant was ordered removed from the United States. The applicant appealed the immigration judge's decision to the BIA. On May 29, 2009, the BIA dismissed the appeal. On March 11, 2010, a Form I-205, Warrant of Removal/Deportation, was issued.

ORDER: The appeal is dismissed.