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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

M1

[REDACTED]

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE:

IN RE: Applicant: [REDACTED]

FEB 08 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:

[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,


for 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 two or more misdemeanors in the United States.

On appeal, counsel asserts, in pertinent part, “[a]lthough the convicted offenses are criminal offenses but certainly, are nonsecurity related offenses and therefore, should warrant a waiver especially when viewewd [sic] from the stand point of the motivation that led to the convicted offenses.” Counsel submits an affidavit from the applicant admitting to his unlawful conduct, but also explaining the circumstances for the violations. Counsel requests that the application be approved based on humanitarian and public interest reasons.

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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) 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 Federal Bureau of Investigation report reflects the following offenses in the state of Florida:

1. On October 2, 1992, the applicant was arrested by the Sheriff's Office of Hendry County for aggravated battery.
2. On September 22, 1994, the applicant was arrested by the Sheriff's Office of Collier County for opening sealed communication. On February 10, 1995, the applicant pled *nolo contendere* to violating Florida Statute 847.011(1), a misdemeanor of the first degree. Case no. [REDACTED]
3. On June 28, 1995, the applicant was arrested by the Sheriff's Office of Orange County for sex assault.
4. On October 8, 1997, the applicant was arrested by the Sunrise Police Department for failure to register vehicle.
5. On September 5, 2001, the applicant was arrested by the U.S. Marshals in Tampa for probation violation.
6. On September 21, 2001, the applicant was arrested by the U.S. Marshals in Miami for probation violation.
7. On November 1, 2001, the applicant was arrested by the Miami-Dade Police Department for flight escape.
8. On June 21, 2002, the applicant was arrested by the Orlando Police Department for operating a motor vehicle with license expired.
9. On January 30, 2007, the applicant was arrested by the Sheriff's Office of Orange County for drive while license suspended and failure to register motor vehicle.

On May 17, 2010 and June 22, 2010, the applicant was requested to submit certified judgment and conviction documents from the courts for all arrests. Counsel, in response, submitted:

- For number one, a document from Hendry County Sheriff's Office indicating that all arrest reports prior to January 1999 had met the retention period and had been destroyed pursuant to F.S.S. 119.
- For number three, certified court documentation in Case no. [REDACTED] from the Circuit Court of the Ninth Judicial Circuit for Orange County, indicating that the applicant was found not guilty of two counts of sexual battery, a violation of Florida Statute 794.011(5).
- For number seven, a complaint/arrest affidavit from the Miami-Dade Police Department, which indicated the applicant was a fugitive in the County of Hillsborough for a criminal warrant issued on October 10, 2001, for the charge of no driver's license.
- For number nine, court documentation in Case no. [REDACTED] from the Circuit Court of the Ninth Judicial Circuit for Orange County, indicating that on April 24, 2007, the applicant pled *nolo contendere* to operating a motor vehicle without a valid driver's license, a violation of Florida Statute 322.03(1), a misdemeanor of the second degree.

- Certified court documentation in Case no. [REDACTED] indicating on July 25, 2001, the applicant was arrested for no driver's license, a violation of Florida Statute 322.03(1), a misdemeanor of the second degree. On February 12, 2003, the applicant was found guilty of this offense.
- Certified court documentation in Case nos. [REDACTED] for license restrictions and Case nos. [REDACTED] for driving while license is suspended, reflecting a *nolle prosequi* was entered for each offense.
- Complaint/arrest affidavits from the Miami-Dade Police Department for arrests that occurred on May 5, 1997, October 17, 1997, and February 3, 1999
- Certified court documentation in Case no. [REDACTED] for obedience to and required control traffic devices, indicating the applicant pled *nolo contendere* to violating Florida Statute 316.074(1), an infraction.

The director, in denying the application, noted that the applicant was also convicted on June 15, 2010, in the Hillsborough County Court of no driver's license. A thorough review of the record, however, does not support the director's finding. Therefore, this finding will be withdrawn.

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 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 failure to provide evidence from the court revealing the final dispositions of his arrests in numbers five, six and eight above.

The record also reflects that on or about May 9, 1997, the applicant falsely represented himself to be a citizen of the United States by using a U.S. Virgin Islands birth certificate in the name of [REDACTED] in an attempt to obtain a United States passport. The applicant was subsequently charged with false claim to U.S. citizenship and false statement on a passport application. On May 29, 1998, in the United States District Court for the Southern District of Florida, the applicant was convicted of violating Title 18 U.S.C. § 1542, false statement on a passport application, a felony. On August 19, 1998, the applicant was sentenced to serve five months in the U.S. Bureau of Prisons and ordered to pay a fine. The applicant was placed on

supervised release for three years. The remaining charge was dismissed. Case no. [REDACTED]

Any crime involving fraud is a crime involving moral turpitude. *Burr v. INS*, 350 F.2d 87 (9th Cir. 1965); *cert. denied*, 383 U.S. 915 (1966). However, in *Matter of Serna*, 20 I&N Dec. 579 (BIA 1992), the BIA addressed whether simple, knowing possession of illegal documents constitutes morally turpitudinous conduct, and held, “the crime of possession of an altered immigration document with the knowledge that it was altered, but without its use or proof of any intent to use it unlawfully, is not a crime involving moral turpitude.”

In the instant case, the applicant willfully and knowingly used a fraudulent U.S. birth certificate in order to obtain a U.S. passport. Therefore, the conviction for this offense renders him inadmissible under section 212(a)(2)(A)(i)(I) of the Act. There is no waiver available for inadmissibility under this section of the Act. 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 for a conviction of a felony committed in the United States.

Therefore, the application must also be denied for these reasons.

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.

Finally, while not the basis for the dismissal of this appeal, it is noted that the record reflects that on March 20, 1998, a Form I-862, Notice to Appear, was served on the applicant. A removal hearing was held on August 24, 2000, 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 November 20, 2002, the BIA dismissed the appeal.

ORDER: The appeal is dismissed.