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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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

JAN 04 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 (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 that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant submits the requested court documents. The applicant indicates at Part 2 on the appeal form that a brief and/or additional evidence would be submitted to the AAO within 30 days.¹ However, more than 60 days later, no additional correspondence has been presented by the applicant.

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 March 26, 2010, reveals the following offenses in the state of Georgia:

1. On January 5, 2001, the applicant was arrested by the Fulton County Sheriff's Office for criminal trespass, a violation of Georgia Code section 16-7-21.
2. On April 19, 2001, the applicant was arrested by the Atlanta Police Department for driving while license suspended or revoked, a violation of Georgia Code section 40-5-121(a).
3. On July 31, 2002, the applicant was arrested by the Atlanta Police Department for theft by receiving stolen property, a violation of Georgia Code section 16-8-7, and driving while license suspended or revoked, a violation of Georgia Code section 40-5-121(a).

¹ Every appeal submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. 8 C.F.R. § 103.2(a)(1). The Form I-290B instructs the applicant to submit a brief and additional evidence to the AAO within 30 days of filing the appeal.

4. On August 2, 2002, the applicant was arrested by the Fulton County Sheriff's Office for failure to appear (criminal trespass), a violation of Georgia Code section 17-6-12.

On April 20, 2010 and June 4, 2010, a notice was issued requesting the applicant to submit certified court dispositions for all arrests. The applicant, in response, only submitted his criminal history record from the Georgia Crime Information Center.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on September 23, 2010.

On appeal, the applicant submits:

- For number one, court document from the Fulton County State Court indicating that on August 7, 2002, the applicant was found guilty of criminal trespass, a misdemeanor. The applicant was ordered to pay a fine, and was sentenced to serve 12 months in jail. The sentence was reduced to time served. Case no. [REDACTED]
- For number two, court document from the Municipal Court of Atlanta indicating that on May 10, 2001, the court entered *nolle prosequi* for the charge of driving while license is suspended or revoked. Citation no. [REDACTED]
- For number three, court document from the Municipal Court of Atlanta indicating that on May 23, 2003, the court entered *nolle prosequi* for the charge of theft by receiving stolen property. The applicant was found guilty of driving while license was suspended or revoked, no proof of insurance a violation of Georgia Code section 40-6-10, and invalid tag, a violation of Georgia Code section 40-2, all misdemeanors. The applicant was ordered to pay a fine and was placed on probation for each conviction. Case no. [REDACTED]
- For number four, documentation dated October 13, 2010, from the Office of The Solicitor General indicating that its office chose not to prosecute the offense of failure to appear and closed its file by marking it Not on Docket (i.e. dismissed) Case no. [REDACTED]

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 and served on the applicant on June 6, 1997. A removal hearing was held on August 26, 1997, and the applicant was removed *in absentia*.

ORDER: The appeal is dismissed.