

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



M1

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

JAN 06 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 the applicant had been convicted of a felony in the United States. The director also denied the application because she determined that the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to the conviction.

On appeal, the applicant acknowledges that he used a false passport to attempt entry into the United States on December 24, 2002. The applicant asserts, "I didn't know the passport was a felony." The applicant requests that his TPS application be reconsidered.

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 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 record reflects on December 24, 2002, the applicant arrived at the Miami International Airport and attempted to gain entry into the United States by presenting a U.S. passport bearing his photograph under the name [REDACTED]. The applicant was referred to secondary inspection, where he was placed under oath, and a sworn statement was taken in his native language, Creole. The applicant admitted to his true name and that the passport was obtained from a friend. The applicant indicated that he was aware that it was against the law to attempt entry into the United States with a fraudulent passport.

On February 20, 2003, the applicant was charged with use of a fraudulent passport and false claim to U.S. citizenship. On April 22, 2003, the applicant was convicted in the United States District Court, Southern Division of Florida of use of a fraudulent passport, a violation of 18 U.S.C. § 1543, a felony. The remaining charge was dismissed. [REDACTED]
MOORE.

Title 18 U.S.C. § 1543 provides, in pertinent part, that:

Forgery or false use of passport

Whoever falsely makes, forges, counterfeits, mutilates, or alters any passport or instrument purporting to be a passport, with intent that the same may be used; or

Whoever willfully and knowingly uses, or attempts to use, or furnishes to another for use any such false, forged, counterfeited, mutilated, or altered passport or instrument purporting to be a passport, or any passport validly issued which has become void by the occurrence of any condition therein prescribe invalidating the same.

The director, in denying the application, determined that the applicant had been convicted of a crime involving moral turpitude. The director noted that the exception rule did not apply in this case as the applicant was not a juvenile and the offense was not a misdemeanor. The director concluded that the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to the conviction and was ineligible for TPS under section 244 of the Act.

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 the fraudulent U.S. passport to gain admission in the United States. 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. Consequently, the director's decision to deny the application for these reasons will be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 January 7, 2003. The applicant's Form I-589, Application for Asylum and Withholding of Deportation, was filed on February 20, 2003. A removal hearing was held on December 14, 2005, and the applicant's asylum application was denied and he was ordered removed from the United States. The

applicant appealed the immigration judge's (IJ) decision to the Board of Immigration Appeals. On March 19, 2007, the BIA, affirmed, without opinion, the IJ's decision.

ORDER: The appeal is dismissed.