

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]

M

FILE:

[REDACTED]

OFFICE: NEBRASKA SERVICE CENTER DATE:

JAN 25 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 Nebraska 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, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The case will be remanded for further action.

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 misdemeanors in the United States.

On appeal, counsel asserts that the director incorrectly denied the TPS application as the applicant has only one misdemeanor conviction.

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 director denied the application because she determined that the applicant had been convicted of two misdemeanors; on February 5, 1986 for assault and battery with a dangerous weapon, and on August 26, 1986 for illegal possession of a Class D substance.

The court documentation in [REDACTED] reflects that on November 10, 1985, the applicant was arrested and subsequently charged with assault and battery by dangerous weapon, a violation of [REDACTED]. On February 5, 1986, the applicant was convicted in the Dorchester District Court of the Commonwealth of Massachusetts of this misdemeanor offense.

The court documentation in [REDACTED] reflects that on July 17, 1986, the applicant was arrested and subsequently charged with illegal possession of a Class D substance, a violation of [REDACTED]. On August 26, 1986, the applicant was convicted in the Dorchester District Court of the Commonwealth of Massachusetts of this misdemeanor offense. However, on October 13, 2004, a motion for new trial was filed. On November 17, 2004, a hearing was held and the case was dismissed at the request of the Commonwealth.

The evidence of record reflects that the applicant has one misdemeanor conviction, and it does not render him ineligible for TPS under the provisions of section 244(c)(2)(B)(i) of the Act and

the related regulations in 8 C.F.R. § 244.4(a). Therefore, the applicant has overcome the director's sole reason for denial of the application and the decision of the director will be withdrawn

However, the evidence contained in the record is insufficient to establish the applicant's qualifying continuous residence in the United States since January 12, 2010, and continuous physical presence since January 21, 2010, as described in 8 C.F.R. § 244.2(b) and (c). It is noted that the only documents provided with the TPS application were copies of the biographical page of the applicant's Haitian passport and the court documents

Therefore, the case will be remanded to the director for further adjudication of the application. The director may request any additional evidence that she considers pertinent to assist with the determination of the applicant's eligibility for TPS. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn. The case is remanded for further action consistent with the above and entry of a new decision.