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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

PUBLIC COPY



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FILE: [Redacted] OFFICE: CALIFORNIA 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: 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 on appeal. The case will be remanded for further consideration.

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, the applicant asserts that his second arrest was in violation of his probation and, therefore, it should not be counted as a 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 record reflects the following offense in the state of Florida:

1. On August 29, 1999, the applicant was arrested by the Sheriff's Office in Orange County for battery.
2. On January 23, 2000, the applicant was arrested by the Sheriff's Office in Orange County for battery.
3. On January 30, 2001, the applicant was arrested by the Sheriff's Office in Orange County for probation violation from a battery conviction.
4. On March 8, 2001, the applicant was arrested by the Sheriff's Office in Orange County for failure to appear for a probation violation from a previous battery conviction.

On April 21, 2010, a notice was issued requesting the applicant to submit certified judgment and conviction documents from the courts for all his arrests. The applicant, in response, submitted a certified letter from the Circuit and county Courts of the Eleventh Judicial Circuit of Florida, which indicated that a search of its records failed to find any felony or misdemeanor records in the applicant's true name.

On June 8, 2010, another notice was issued requesting the applicant to submit certified judgment and conviction documents from the courts for all his arrests under all the aliases he had used.

The applicant, in response, provided certified court documentation in Case no. [REDACTED] which reflects that on August 30, 1999, the applicant was charged with battery, a violation of Florida Statue section 784.03, a misdemeanor of the first degree. On January 23, 2000, an arrest warrant was served. On February 14, 2000, the applicant pled *nolo contendere* to the charge. The applicant was sentenced to ten days in jail with credit of seven days time served, ordered to attend batters intervention program and pay a fine and was placed on probation for 361 days. On January 25, 2001, the applicant violated his probation and a warrant was issued. On January 30, 2001, the arrest warrant was served. On March 6, 2001, the applicant failed to appear in court for a violation of probation hearing. On March 8, 2001, the applicant was arrested for failure to appear. On May 8, 2001, a violation of probation hearing was held, which was subsequently continued. On August 30, 2001, the applicant was found guilty of violation of probation. The applicant was sentenced to seventeen days in jail with credit of seven days time served. The remaining ten days were suspended on condition the applicant complete the batters intervention program.

The director determined that the applicant had been convicted of battery on February 14, 2000, and on August 30, 2001, of failure to appear. However, the court documentation submitted clearly indicates that the applicant was found guilty of violation of probation not failure to appear.

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 director's decision 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).

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.