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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

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M,

DATE: **JUL 28 2011** Office: CALIFORNIA SERVICE CENTER

FILE:

IN RE: Applicant:

APPLICATION: Application for Temporary Protected Status under Section 244 of the  
Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

**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 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 misdemeanors in the United States.

On appeal, counsel asserted that traffic related offenses should not be considered in the same vane as misdemeanor crimes. Counsel asserted that the director erred in concluding that the applicant's traffic related conviction of March 2, 2006 meets the definition of "misdemeanor" crime. Counsel indicated at Part 2 on the appeal form that a brief and/or additional evidence would be submitted to the AAO within 30 days.<sup>1</sup> However, more than 90 days later, no additional correspondence has been presented by counsel or 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.

In response to the notice dated October 21, 2010, which requested the final court dispositions of her arrests on May 3, 2004 for theft and on January 8, 2006 for resisting officer – obstruct by disguised person, the applicant provided:

1. A booking report from the Sheriff's Office of Broward County Florida, which indicated that on May 3, 2004, the applicant was arrested and charged with petit theft, a violation of Florida Statute 812.014(3)(a), a misdemeanor of the second degree. Court documentation in Case no. [REDACTED] from the Broward County Court of Florida indicates that on June 29, 2004, the applicant pled no contest to violating Florida Statute 812.014(3)(a). Adjudication of guilt was withheld and the applicant was ordered to pay a fine.

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<sup>1</sup> 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.

2. Court documentation in Case no. [REDACTED] from the Broward County Court of Florida, indicating that on March 2, 2006, the applicant pled no contest to violating Florida Statute 901.36(1), unlawful use of false name/identity, a misdemeanor of the first degree, Florida Statute 322.03(1), operating a vehicle without a valid license a misdemeanor of the second degree, and Florida Statute 316.18(1), violate municipal speed, a traffic infraction.

The maximum penalty for a conviction of a misdemeanor of the second degree is imprisonment for a period of not more than 60 days in jail or by a fine of not more than \$500, or both such fine and imprisonment. The maximum penalty for a conviction of a misdemeanor of the first degree is imprisonment for a period of not more than a year or by a fine of not more than \$1000, or by both such fine and imprisonment. See Florida statutes 775.082(4) and 775.083(1). As noted above, for immigration purposes, a misdemeanor is any offense that is punishable by imprisonment for a term of one year or less, *regardless of the term such alien actually served, if any*. Therefore, the above violations of Florida Statutes 814.014(3)(a), 322.03(1) and 901.36(1) constitute misdemeanors for immigration purposes.

The applicant's traffic infraction conviction does not constitute a misdemeanor for immigration purposes. However, the applicant is ineligible for TPS due to his three 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 this appeal, it is noted that the record reflects that on November 29, 2005, a removal hearing was held and the applicant was ordered removed *in absentia*. The applicant filed a motion to reopen *in absentia* removal order, which was denied by the immigration judge on January 5, 2006. On January 31, 2006, the applicant appealed the immigration judge's decision before the Board of Immigration Appeals (BIA). On May 30, 2006, the BIA dismissed the appeal.

**ORDER:** The appeal is dismissed.