

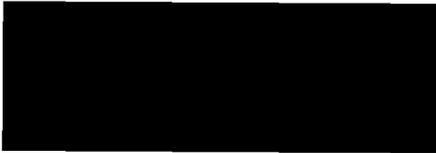
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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DATE: Office: CALIFORNIA SERVICE CENTER
JUN 08 2011

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: 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 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 three misdemeanors in the United States.

On appeal, the applicant asserts that he has never been convicted of three misdemeanors in the United States. The applicant submits documentation in an attempt to support his assertion.

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 (FBI) report revealed that on December 6, 1999, the applicant was arrested under the alias Remy Augustine by the Sheriff's Office of Broward County, Florida for aggravated assault with a weapon and battery-domestic violence.

On May 19, 2010, the applicant was requested to submit certified judgment and court documents for all arrests. The applicant, in response, submitted a letter dated June 25, 2010, from the Sheriff's Office of Broward County, which included a traffic citation [REDACTED] of February 24, 2009, for driving while license is suspended with knowledge, and court documentation in Case no. [REDACTED]. The court documentation reflects that on June 25, 2009, the applicant pled no contest to driving while license is suspended, a violation of Florida Statute 322.34(2)(a), a misdemeanor of the second degree. Adjudication of guilt was withheld and the applicant was ordered to pay a fine and court costs.

The applicant also submitted a document dated June 25, 2010, from a representative of the Sheriff's Office of Broward County, who indicated that all felony arrests prior to 1998 and all misdemeanor arrests prior to 2000 have been destroyed pursuant to the guideline established by the State of Florida, Department of State Division of Library and Information Services.

The record contains court documentation in Case no. [REDACTED] from the Circuit/County Court, in and for Broward County, Florida, which reflects that on June 1, 2000, Remy Augustin, pled *nolo contendere* to one count assault, a violation of Florida Statute 784.011, and one count

of battery, a violation of Florida Statute 784.03(1), both misdemeanors. Adjudication of guilt was withheld and the applicant was placed on probation for six months for the assault conviction, and twelve months for the battery conviction. The applicant was also ordered to pay a fine.

The director, in denying the application, noted that the applicant had also been convicted of a misdemeanor offense of careless driving a violation of Florida Statute 316.1925. Pursuant to Florida Statute 316.1925(2), any person who violates this section shall be cited for a moving violation, punishable as provided in chapter 318. Chapter 318 of the Florida Statute relates to dispositions of 'traffic infractions'. As such, the director's finding that the careless driving violation is a misdemeanor will be withdrawn.

In support of his assertion that he has never been convicted of any misdemeanors in the United States, the applicant, on appeal, submits a Certificate of Search from the County Court of Broward County, which indicates that after a diligent search of its records for the past 15 years, there are no charges pending/no record of any charges against [REDACTED]

However, the applicant's criminal record was discovered through a FBI fingerprint comparison. FBI records are regulated by law and furnished for official use only. It is the position of U.S. Citizenship and Immigration Services that a FBI fingerprint comparison provides a more thorough account of an applicant's criminal background than local record searches conducted by name. As previously noted, the FBI report revealed that the applicant was arrested under an alias on December 6, 1999. No evidence was submitted from the court indicating that a record check was made under the alias, [REDACTED] or through a fingerprint search.

Furthermore, in response to the notice of May 19, 2010, the applicant provided the court documentation in his true name, which reflected a misdemeanor conviction of driving while license is suspended.

The applicant is ineligible for TPS due to his three misdemeanors 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 January 18, 2005. A removal hearing was held on January 12, 2006, and the applicant was ordered removed from the United States. The applicant appealed the immigration judge's decision to the Board of Immigration Appeals (BIA). On July 22, 2008, the BIA dismissed the appeal for lack of jurisdiction.

ORDER: The appeal is dismissed.