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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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[Redacted]

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FILE: [Redacted] OFFICE: CALIFORNIA SERVICE CENTER DATE: **MAR 01 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 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.

“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.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record reflects that on December 18, 2002, the applicant arrived at the Miami International Airport and attempted to seek entry into the United States by presenting a U.S. passport bearing her photograph under the name [REDACTED]. The applicant was referred to secondary inspection, where she was placed under oath, and a sworn statement was taken in her native language, Creole. The applicant admitted to her true name and that the passport was obtained from a friend in Haiti. The applicant indicated that she was aware that it was against the law to gain entry into the United States with a fraudulent passport.

On January 31, 2003, the applicant was charged with use of a false or forged passport and false claim to U.S. citizenship. On March 7, 2003, the applicant was convicted in the United States District Court, Southern District of Florida of violating 18 U.S.C. § 1543, use of a false and altered passport, a felony. The remaining offense was dismissed. Case no. [REDACTED].

On appeal, counsel asserts, in pertinent part:

The recent Supreme Court Decision in [REDACTED] indicates that the felony convictions which would be sufficient grounds for denying residency and certainly any other status, has to be of an “aggravated” or significant nature which would indicate the undesirability of the applicant.

The statute and relating regulation provide that an alien shall not be eligible for TPS if the alien has been convicted of any felony or two or more misdemeanors committed in the United States. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

Counsel's reliance on the above cited case is misplaced as it involves a recidivist statute that was improperly applied by the immigration court during an individual's removal proceedings. The immigration court misapplied the recidivist statute by elevating the individual's second drug conviction to an aggravated felony. The state court, however, did not use a sentencing enhancement and the Supreme Court held that the immigration court could not, *ex post*, enhance the state offense of record just because facts known to it would have authorized a greater penalty.

The applicant is ineligible for TPS due to her felony conviction. 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 application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

An alien is inadmissible if she has been convicted of a crime involving moral turpitude (other than a purely political offense), or if she admits having committed such crime, or if she admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

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.

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 Board of Immigration Appeals (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." The BIA reasoned that there may be circumstances under which the respondent

might not have had the intent to use the altered immigration document in his possession unlawfully.

Conversely, a person may be convicted under the same section with intent to use the fraudulent passport, which conduct involves 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 her 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 appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for dismissal. 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.

ORDER: The appeal is dismissed.