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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

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**U.S. Citizenship
and Immigration
Services**

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FILE:

OFFICE: CALIFORNIA SERVICE CENTER DATE:

MAR 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:

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, the applicant provides an explanation that led up to each arrest in May 2008 and November 2008. The applicant requests that her application be reconsidered and approved.

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).

"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.

"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 report dated April 30, 2010, reflects the following offenses in the state of Florida:

1. On May 1, 2008, the applicant was arrested by the Sheriff's Office of Collier County for aggravated battery and criminal mischief. On November 21, 2008, a *nolle prosequi* was entered for both offenses.
2. On November 21, 2008, the applicant was arrested by the Naples Police Department for two counts of resisting an officer without violence.
3. On April 21, 2009, the applicant was arrested by the Tampa Police Department for failure to appear.
4. On April 23, 2009, the applicant was arrested by the Sheriff's Office of Collier County for failure to appear on two counts of resisting an officer without violence.

In response to the notice dated May 10, 2010, which requested certified judgment and convictions documents from the courts for all arrests, the applicant provided:

- An arrest report dated May 1, 2008, from the Sheriff's Office of Collier County for aggravated battery/great bodily harm/permanent disability, a violation of Florida Statute 784.045(1)(a)(1), a felony in the second degree, and criminal mischief, a violation of Florida Statute 806.13(1)(b)(2), a misdemeanor in the first degree.
- A letter dated November 6, 2008, from the Public Defender Office indicating that the prosecutor was "going to dismiss your case."
- An arrest report dated November 11, 2008, from the Sheriff's Office of Collier County for one count of resisting officer without violence, a violation of Florida Statute 843.02, and obstruction of any officer, a violation of Florida Statute 843.02, both misdemeanors in the first degree. The applicant was scheduled for an arraignment on December 3, 2008.
- An arrest report dated April 23, 2009, from the Sheriff's Office of Collier County indicating the applicant was arrested under warrant () for failure to appear on two counts of resisting an officer without violence, a violation of Florida Statute 843.15(1)(b).
- Court documentation in Case no. , which indicated that on May 15, 2009, the applicant pled no contest to two counts of resisting/obstructing an officer without violence. The applicant was ordered to pay a fine and was sentenced to time served.

The applicant is ineligible for TPS due to her two 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 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 April 26, 2005. A removal hearing was held on December 9, 2009, and the applicant was ordered removed from the United States. The applicant filed an appeal before the Board of Immigration Appeals (BIA). On February 5, 2010, the BIA dismissed the appeal for lack of jurisdiction.

ORDER: The appeal is dismissed.