

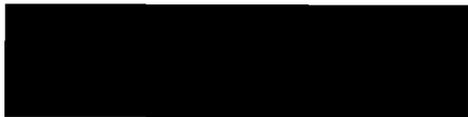
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: Office: CALIFORNIA SERVICE CENTER

FILE: 

MAY 11 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,


for 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 she determined that the applicant was inadmissible under section 212(a)(2)(C)(i) of the Act. The director also denied the application because the applicant failed to submit the requested court disposition relating to his criminal record.

On appeal, the applicant asserts, "I have evidence that I was innocent. I was wrongly judged by the judicial system."

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.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

The Federal Bureau of Investigation report dated June 30, 2010, reflects that on May 27, 1999, the applicant was arrested in Miami, Florida for possession with intent to distribute cocaine.

According to the documentation filed along with the indictment, on May 27, 1999, the applicant was observed driving a truck at the Miami International Airport terminal service and that the truck was observed backing up to the dock where the applicant loaded a cardboard box into flatbed compartment of the vehicle. The applicant was observed by the Miami-Dade Police Department of failing to comply with a traffic control device at an intersection, and activated its emergency equipment and stopped the vehicle. During the time the citation [REDACTED] was being issued, two K-9 dogs approached the vehicle and demonstrated a positive alert for the presence of a controlled substance in the cardboard box that was in the flatbed compartment of the vehicle. The officers opened the box and observed approximately 24 kilograms shaped packages wrapped in duct and/or plastic tape. The packages were field tested which resulted in positive results and weighed approximately 19.2 kilograms. The applicant was taken into custody.

The indictment in [REDACTED] indicates that the applicant knowingly and intentionally conspired to possess with intent to distribute a schedule II controlled substance, and knowingly and intentionally possess with intent to distribute a schedule II controlled substance in violation of Title 21, U.S.C. sections 841(a)(1) and 846 and Title 18 U.S.C. section 2.

The director, citing *Matter of Rico*, 16 I&N Dec. 181 (BIA 1977), determined that the applicant was inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act because she had reason to believe the applicant is or has been an illicit trafficker. Accordingly, on January 5, 2011, the director denied the application.

On appeal, the applicant asserts that he is innocent and has been wrongly judged by the judicial system. The applicant submits a copy of a statement dated "8/03" he asserts that he gave to the U.S. District Court regarding his co-defendant at the time of his arrest. The applicant also submits a male custody classification form dated July 4, 2001, a letter dated June 26, 2008, regarding the applicant's volunteer work, his Florida driver's license issued in 2008, and Forms I-797-C regarding his TPS application, application for employment authorization, and ASC appointment notice.

The applicant's statement on appeal has been considered. The AAO, however, is not the appropriate forum to determine constitutional issues involving the applicant's criminal record. Rather, those issues are within the jurisdiction of the judicial court. Furthermore, the AAO may only look to the judicial records to determine whether the person had been convicted of the crime, and may not look behind the conviction to reach an independent determination concerning guilt or innocence. *Pablo v. INS*, 72 F.3d 110, 113 (9th Cir. 1995); *Gouveia v. INS*, 980 F.2d 814, 817 (1st Cir. 1992); and *Matter of Roberts*, 20 I&N Dec. 294 (BIA 1991).

The AAO finds that there is sufficient, reasonable, substantial, and probative evidence to support the director's conclusion that there was reason to believe the applicant is or has been an illicit trafficker in a controlled substance or is or has been a knowing assistor, abettor, conspirator, or colluder in the illicit trafficking in a controlled substance. The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(2)(C) of the Act. There is no waiver available to an alien found inadmissible under section 212(a)(2)(C) of the Act. 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).

The director noted in her decision that the applicant was also ineligible for the benefit sought as he failed to submit the requested final court disposition for his arrest on May 27, 1999. It is noted that the applicant, in response, to the notice of September 21, 2010, provided incomplete court

documentation. A review of the record, however, contains the complete final court disposition that was submitted during the applicant's removal proceedings.

The court judgment documents in Case no. [REDACTED] indicate that on December 6, 1999, the applicant was found guilty of violating Title 21, U.S.C. section 841(a)(1), possession with intent to distribute cocaine, and Title 21, U.S.C. section 846, conspiracy to possess with intent to distribute cocaine, both felonies. The applicant was sentenced to serve 120 months in prison and placed on four years supervised release.

The applicant is also ineligible for TPS due to his felony 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.

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.

Finally, while not the basis for the dismissal of the appeal, it is noted that the record reflects that on July 28, 2008, a removal hearing was held 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 October 30, 2008, the BIA dismissed the appeal. On January 26, 2009, a Form I-205, Warrant of Removal/Deportation, was issued. On June 30, 2009, a Form I-220B, Order of Supervision, was issued that appears to be still in effect.

ORDER: The appeal is dismissed.