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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



M1

DATE: **SEP 08 2011** Office: NEBRASKA 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 Nebraska 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 Nebraska 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, Nebraska 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 a felony in the United States.

On appeal, counsel puts forth a brief disputing the director's findings.

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.

The record reflects that on March 12, 1996, the applicant arrived at the Miami International Airport and attempted to seek entry into the United States by presenting a Haitian passport and Florida driver license. The applicant was referred to secondary, where it was determined that the Haitian passport and Florida driver license were both fraudulent. Because the applicant presented a counterfeit driver license, the Florida Highway Patrol Investigations Divisions was notified. The applicant was subsequently arrested on state charges for possession of a fraudulent driver license.

The court documentation in Case no. [REDACTED] reflects that on [REDACTED] 1996, the applicant was charged with violating Florida Statute 322.212(1), possession of false or fictitious driver license, a felony of the third degree. On [REDACTED] 1996, the applicant pled *nolo contendere* to the felony charge. Adjudication of guilt was withheld. The applicant was credited for time served.

On appeal, counsel asserts, in pertinent part:

In the case at bar, the law was incorrectly applied because [the applicant] was an arriving alien, unlike other aliens who entered the United States using fraudulent documents they are no [not] charged with a felony. Moreover, any alien who was apprehended by Immigration for using fraudulent documents are usually issued a NTA for immigration court proceedings and they are usually paroled. Any individual who has entered the United States using fraudulent documentation and

was apprehended by immigration have been granted TPS upon submission of the I-601 Waiver. Here [the applicant], entered the United States as an arriving alien with a fraudulent documentation and is being charged as a felon.

Contrary to counsel's assertion, the applicant was issued a Form I-862, Notice to Appear, on March 12, 1996. An exclusion hearing was held on October 3, 1996; however, the applicant failed to appear for the scheduled hearing. The applicant was ordered excluded and deported *in absentia*. Furthermore, not all individuals who file a Form I-601 have been granted the benefit being sought. Each individual case is ultimately decided on its own merits and based on its own record of proceeding.

The applicant is ineligible for TPS due to his 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 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, it is noted that the applicant's two other alien registration numbers, [REDACTED] and [REDACTED] have been consolidated into [REDACTED]

ORDER: The appeal is dismissed.