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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: Office: CALIFORNIA SERVICE CENTER

FILE:

JUL 12 2012

IN RE: Applicant:

APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254a

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 a felony in the United States.

On appeal, the applicant asserts that he was not charged for child abuse on April 23, 2008. The applicant states, “[t]he judge realized that I was only spanking the child, but with no intention of abuse. Based on that, there was no charge pressed against me, except for a time of probation, which I serve.”

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 5, 2010, reflects that on January 13, 2008, the applicant was arrested by the North Miami Police Department of Florida for cruelty toward child.

In response to the notice dated November 28, 2011, which requested the applicant to submit certified judgment and conviction documents for all arrests, the applicant submitted the arrest report dated January 13, 2008 and the court documentation from the Eleventh Judicial Circuit Court in Case no. [REDACTED]

The court documentation indicates that on April 23, 2008, the applicant pled guilty to violating Florida Statute 827.03(1), child abuse/no great bodily harm, a felony of the third degree.

Adjudication of guilt was withheld and the applicant was ordered to pay court cost and was placed on probation for two years.

Contrary to the applicant's assertion, the court documentation clearly indicates that he was charged with and pled guilty to violating Florida Statute 827.03(1). Florida Statute 827.03(1) is defined as abuse, aggravated abuse, and neglect of a child.

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

The court disposition submitted clearly reflects that he pled guilty to the felony offense and the judge ordered some form of punishment (probation and court cost) to the charge. Therefore, the applicant has been "convicted" of the felony offense for immigration purposes.

The applicant asserts that he has successfully completed the terms of his probation. However, mere compliance with a court order neither alleviates the applicant of a conviction that has occurred nor dismisses the conviction.

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.

ORDER: *The appeal is dismissed.*