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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: JUN 20 2012 Office: CALIFORNIA 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. § 1254a

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 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 re-registration 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 re-registration application because the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel asserts that the director denied the applicant's re-registration application "because of the same old criminal charges that USCIS had previously held were not two separate convictions." Counsel states that the applicant has been convicted of one misdemeanor with two counts. Counsel submits an additional copy of the court disposition relating to the applicant's arrest on January 7, 2000.

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).

"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 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 Federal Bureau of Investigation report dated December 1, 2011, reflects that on January 7, 2000, the applicant was arrested by the [REDACTED] for possession of marijuana and obstructing justice.

The court documentation in Case no. [REDACTED] from the Circuit/County Court in and for [REDACTED] indicates that on March 8, 2000, the applicant pled *nolo contendere* to violating count one, resist/obstructing an officer and count two, possession of cannabis, both misdemeanors. Adjudication of guilt was withheld and the applicant was ordered to pay a \$70 fine for count one and a \$140 fine for count two.

The applicant has been "convicted" of the offenses for immigration purposes as the court disposition submitted reflects that the applicant pled *nolo contendere* to each offense and the judge ordered some form of penalty to each charge. Section 101(a)(48)(A) of the Act.

The fact that the offenses arose from a common scheme does not preclude them from being counted as separate offenses. The applicant was charged with two separate counts to which he pled *nolo contendere* to two separate crimes and the court ordered two separate punishments. *Black's Law Dictionary*, 401 (9th Ed., 2009) defines the term "count" to mean a separate and distinct claim in a complaint or similar pleading. It also indicates that the term "count" is used to signify the part of an indictment charging a distinct offense. The applicant has been convicted of two separate and distinct misdemeanor offenses.

The applicant is ineligible for TPS due to his two misdemeanors. 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 re-registration 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 for the record that in a separate decision the director withdrew the applicant's TPS (receipt number [REDACTED]) on February 10, 2012, pursuant to 8 C.F.R. § 244.14(a)(1).¹

ORDER: The appeal is dismissed.

¹ The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status.