

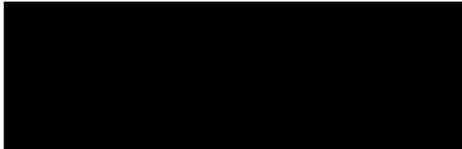
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: **MAR 02 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. § 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,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a 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 found that the applicant had failed to submit all the requested court documentation relating to his criminal record.

On appeal, counsel asserts that the applicant contends that he has never been convicted or found guilty of any crimes, and that all charges he faced in court were all dismissed or dropped. Counsel provides two court dispositions from the court. Counsel indicates at Part 2 on the appeal form that a brief and/or additional evidence would be submitted to the AAO within 30 days.¹ To date, however, no additional correspondence has been presented by counsel or the applicant.

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 Federal Bureau of Investigation report dated May 27, 2011, reveals the following offenses in the state of Florida:

1. On May 21, 2005, the applicant was arrested by the Coral Springs Police Department for larceny.
2. On August 22, 2006, the applicant was arrested by the Coral Springs Police Department for no driver's license, attached registration license plate not assigned, failed to register vehicle and no proof of insurance.

Pursuant to a notice dated September 6, 2011, the applicant was requested to submit certified judgment and conviction documents from the courts for all arrests. In response, the applicant

¹ Every appeal submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. 8 C.F.R. § 103.2(a)(1). The Form I-290B instructs the applicant to submit a brief and additional evidence to the AAO within 30 days of filing the appeal.

submitted court documentation in Case no. [REDACTED] from the Broward County Court relating to an infraction violation that occurred on May 28, 2009.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on November 8, 2011.

On appeal, counsel submits:

- Court documentation in Case no. [REDACTED] from the Broward County Court, which indicates that the applicant pled no contest to violating Florida Statute [REDACTED], driving without a valid license, and [REDACTED] failure to register vehicle, both misdemeanors of the second degree. Adjudication of guilt was withheld and the applicant was ordered to pay a fine. A [REDACTED] [REDACTED] was entered for the charge of unlawful license tag/sticker attach. The remaining offense is an infraction.
- Court documentation in Case no. [REDACTED] from the [REDACTED] [REDACTED], which indicates that the applicant pled no contest to violating [REDACTED] [REDACTED] petit theft, a misdemeanor of the second degree. Adjudication of guilt was withheld and the applicant was ordered to pay a fine and complete a FACT² program.

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.

Contrary to counsel's assertion, the court dispositions submitted clearly reflect that the applicant pled no contest to the offenses and the judge ordered some form of punishment to each charge. Therefore, the applicant has been "convicted" of the offenses for immigration purposes.

The applicant is ineligible for TPS due to three 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.

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.

² Florida Assertive Community Treatment.