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

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U.S. Citizenship and Immigration Services

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[redacted]

DATE: MAR 06 2012 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Applicant: [redacted]

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, Vermont 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 it was determined that the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

On appeal, the applicant asserts he did not know that he was breaking the law at the time, and that he would have never willingly committed any crime, especially a crime involving moral turpitude. The applicant states that he meets the exception clause as he was only imprisoned for three months.

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 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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act. The most commonly accepted definition of a crime involving moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *Jordan v. De George*, 341 U.S. 223, reh'g denied, 341 U.S. 956 (1951).

The record contains court documentation in Case no. [redacted] from the United States District Court, Southern District of Florida, which indicates that on April 10, 2009, the applicant

pled guilty to one count of violating Title 18 U.S.C. §1546(a), knowingly possess, use and attempt to use, a document prescribed by statute and regulation for entry into the United States, that is a DHS/USCIS "Asylum Grant" Stamp contained on an I-94 Immigration Departure Record, knowing it to be forged, counterfeited, altered and falsely made, a felony. The applicant was credited for time served, ordered to pay a fine and was on supervised release for two years.

The director determined that the applicant did not meet the exception clause under section 212(a)(2)(A)(ii) of the Act. The director concluded that the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act and denied the application on November 8, 2011.

Section 212(a)(2)(A)(ii) of the Act provides for an exception to inadmissibility of an alien convicted of only one crime of moral turpitude if :

> (II) the *maximum* penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

(Emphasis added).

The applicant does not qualify for the above exception as the statutory *maximum* term of imprisonment for a violation of 18 U.S.C. § 1546 is ten years.

Any crime involving fraud is a crime involving moral turpitude. *Burr v. INS*, 350 F.2d 87 (9th Cir. 1965); *cert. denied*, 383 U.S. 915 (1966). However, in *Matter of Serna,* 20 I&N Dec. 579 (BIA 1992), the Board of Immigration Appeals (BIA) addressed whether simple, knowing possession of illegal documents constitutes morally turpitudinous conduct, and held, "the crime of possession of an altered immigration document with the knowledge that it was altered, but without its use or proof of any intent to use it unlawfully, is not a crime involving moral turpitude."

In the instant case, court concluded that the applicant knowingly used the fraudulent Form I-94 to obtain a benefit. Therefore, the conviction for this offense renders him inadmissible under section 212(a)(2)(A)(i)(I) of the Act. There is no waiver available for inadmissibility under this section 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 applicant is also 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 for a conviction of a felony committed in the United States. Therefore, the application must also be denied for this reason.

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 this appeal, it is noted that the record reflects that a removal hearing was held on August 14, 2003, and the applicant was ordered removed from the United States. The applicant appealed the immigration judge's decision to the BIA. On November 30, 2004, the BIA dismissed the appeal. On November 6, 2006, the applicant filed a motion to reopen before the BIA. On December 14, 2006, the BIA denied the motion to reopen. On May 7, 2007, a Form I-205, Warrant of Removal/Deportation, was issued.

ORDER: The appeal is dismissed.