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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

JUL 11 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 re-registration application was denied by the Director, California 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 re-registration application because the applicant had been convicted of two felonies in the United States.

On appeal, the applicant argues that the decision to deny his re-registration application is erroneous because "last year I have been approve for the TPS." The applicant asserts that he has not committed any crimes since his TPS has been approved.

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 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 November 22, 2011, reveals the following offenses in the state of Florida:

1. On [REDACTED] 1996, the applicant was arrested by the [REDACTED] Police Department for sexual battery. On [REDACTED] 1997, the charges were dropped.

2. On [REDACTED] 1997, the applicant was arrested by the [REDACTED] Police Department for burglary and grand theft.
3. On [REDACTED] 1999, the applicant was arrested by the [REDACTED] Police Department for aggravated assault weapon without intent to kill, failure to appear for a felony offense, and aggravated battery.
4. On [REDACTED] 1999, the applicant was arrested by the [REDACTED] Sheriff's Office for failure to appear for a gambling offense.
5. On [REDACTED] 2000, the applicant was arrested by the [REDACTED] Police Department for robbery, and resisting officer – obstruct without violence.
6. On [REDACTED] 2000, the applicant was arrested by the [REDACTED] Sheriff's Office for failure to appear for a driving while license is suspended/cancelled/revoked offense, and for leaving the scene of an accident.

On December 14, 2011, the applicant was requested to submit certified judgment and conviction documents from the courts for all arrests. The applicant, in response, submitted criminal history reports from the [REDACTED] of [REDACTED] which revealed the following:

- For number two, court documentation in Case no. [REDACTED] which indicates that on [REDACTED] 1997, the applicant was charged with burglary of a structure, a violation of Florida Statute 810.03, and grand theft, a violation of Florida Statute 812.014, both felonies. On [REDACTED] 1999 the applicant was found guilty of violating both offenses.
- For number three, court documentation in Case no. [REDACTED] which indicates that on [REDACTED] 1999, the applicant was charged with aggravated assault with a deadly weapon, a violation of Florida Statute 784.021, a felony. The final judgment was not provided as the last entry on the court documentation is a date of [REDACTED] 1999 indicating that the case was set for [REDACTED] 1999.
- For number four, court documentation in Case no. [REDACTED] which indicates that on [REDACTED] 1999, the applicant pled guilty to violating Florida Statute 849.08, gambling, a misdemeanor of the second degree. The applicant was sentenced to serve 60 days in jail (27 days credited for time served) and ordered to pay court cost.
- For number five, court documentation in Case no. [REDACTED] which indicates that on [REDACTED] 2000, the applicant was charged with robbery with a firearm and grand theft auto. On [REDACTED] 2000 the applicant was found not guilty of both charges.
- For number six, the court documentation in Case no. [REDACTED] which indicates that on [REDACTED] 2000, the applicant was charged with leaving the scene of an accident without giving information and reckless driving. However, the

final judgment of these charges were not provided as the last entry on the court documentation is a date of [REDACTED] 2000, indicating that a notice of appearance was filed by the court ordered appointed counsel or special public defender.

- A criminal history report in Case no. [REDACTED] from [REDACTED] of [REDACTED] County, which indicates that on [REDACTED] 2000, the applicant, under the alias [REDACTED] was arrested for failure to appear for an arrest of driving while license suspended. The applicant pled guilty to driving while license is suspended/cancelled/revoked, a violation of Florida Statute 322.34(2), a misdemeanor. The applicant was ordered to pay court cost.

The director concluded that the applicant is ineligible for TPS due to his convictions on [REDACTED] 1999.

On appeal, the applicant asserts that he has not committed any crimes since his TPS has been approved. However, a time limitation is not provided for criminal activities for applicants for TPS under section 244(c)(2)(b) of the Act, and as provided in 8 C.F.R. § 244.4(a). Further, 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. 8 C.F.R. § 244.14(a)(1).

The applicant asserts, “[a]ccording to Florida Statutes 810.02(B) burglary is a felony for offense committed after [REDACTED] 2001.” The applicant’s assertion has no merit as the statute at 810.02(b) only broadened the definition of a “burglary” offense committed after [REDACTED] 2001. As the applicant committed the burglary offense prior to [REDACTED] 2001, the AAO looks to the statute at 810.02(1)(a), which defines the meaning of “burglary” offenses committed on or before [REDACTED] 2001. The fact remains that the crime of burglary has been classified as a felony under the Florida Statute whether the offense was committed before, on or after [REDACTED] 2001. Further, no credible evidence has been submitted indicating that the court handled the offense as a misdemeanor.

The applicant claims that he is being punished for a crime he did not commit. The AAO, however, is not the appropriate forum to determine constitutional issues involving the applicant’s criminal record. Rather, those issues are within the jurisdiction of the judicial court. Furthermore, the AAO may only look to the judicial records to determine whether the person had been convicted of the crime, and may not look behind the conviction to reach an independent determination concerning guilt or innocence. *Pablo v. INS*, 72 F.3d 110, 113 (9th Cir. 1995); *Gouveia v. INS*, 980 F.2d 814, 817 (1st Cir. 1992); and *Matter of Roberts*, 20 I&N Dec. 294 (BIA 1991).

The applicant is ineligible for TPS due to his felony and 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. 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 has failed to provide any evidence revealing the final court dispositions of his arrests in numbers three and six above. Therefore, the applicant is also ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Therefore, the application must be denied on this basis as well.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.