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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

M<sub>1</sub>

[REDACTED]

DATE: **SEP 21 2012**

Office: NEBRASKA SERVICE CENTER

FILE: [REDACTED]  
[REDACTED]

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

[REDACTED]

**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 Nebraska 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,

  
for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The re-registration application was denied by the Director, Nebraska 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 at least two misdemeanors in the United States.

On appeal, counsel argued that the applicant's re-registration application was denied in error because "there are no statutes of conviction listed in the record of conviction and the disposition submitted lists "misdemeanor" in the singular."

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 director, in denying the application, determined that on September 14, 2010, in the Probate Court of Cook County, Georgia, the applicant had been convicted of two misdemeanors; obstruction of officer and hit and run - duty of driver to stop at or return to scene of accident.

On August 2, 2012, the AAO issued a notice which advised the applicant that the statements made on appeal by his counsel did not overcome the director's findings, and that it was the AAO's intent to dismiss the appeal. The applicant was further advised that it was his burden to establish with affirmative evidence that the above offenses did not result in convictions for immigration purposes. The applicant was granted 30 days in which to submit: 1) a certified copy of his arrest report from the arresting agency listing the statutes he had violated; and 2) the indictment/charging docket from the Probate Court of Cook County, Georgia listing the statutes he

was charged with and subsequently convicted of. The applicant was also informed that he may submit a certified document from the Probate Court of Cook County Georgia, which indicates the pertinent statutes of the charges he was convicted of and whether each charge is classified as a felony or misdemeanor.

Counsel, in response, asserts, in pertinent part:

The attached records make clear that all of the charges in the above-mentioned all arose out of a single scheme of conduct. Thus, even if more than one of the charges are for a “misdemeanor”, the record makes clear the event was treated as one conviction. Thus, there would be only ONE conviction for a misdemeanor. Thus, this is why he [the applicant] was given only one misdemeanor sentence.

Even under the most recent action for “Deferral of Removal for Childhood Arrivals” the USCIS takes the position that “if USCIS determines that you have been convicted of ... three or more misdemeanors not occurring on the same date and not arising out of the same act, omission or scheme of conduct... USCIS is unlikely to consider you for an exercise for deferred action.”

Further under INA§ 237(a)(2)(A)(ii), the Government will not find a person deportable if he or she was convicted of multiple crimes involving moral turpitude if they arose out of a single scheme of criminal misconduct.

Counsel, in response, submitted:

- The incident report along with five traffic citations dated July 15, 2010, which indicates that the applicant was arrested for violating obstructing a law enforcement officer, failure to yield after stopping at stop sign, failure to notify owner upon striking a fixed object, driving while unlicensed and leaving a scene of accident.
- Court documentation in Case no. [REDACTED] from the Probate Court of Cook County, Georgia, which indicates that the applicant pled guilty to Count 1, obstruction of officer; Count 2, hit and run - duty of driver to stop at or return; Count 3, violation of duty upon striking a fixture; Count 4, stop sign violation; and Count 5; to a lesser included offense of no license on person. The applicant was ordered to pay a separate fine for each count.
- Page six of the instructions for Form I-821D, Consideration for Deferred Action for Childhood Arrivals.
- A printout of section 237(A)(2)(A)(ii) of the Act.

Counsel’s assertion that the above offenses arose in a single occasion and, therefore, the applicant was convicted of a single misdemeanor offense, cannot be accepted. While the

misconduct” may be relevant to an individual’s removability under section 237 of the Act, or to eligibility under deferred action, this determination has no bearing on the applicant’s eligibility for TPS. *Black’s Law Dictionary*, 401 (9<sup>th</sup> 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. According to the court disposition, the applicant was charged with five separate violations to which he pled guilty to five separate crimes and the court ordered five separate penalties. Therefore, the applicant has been convicted of five separate and distinct offenses.

The applicant is ineligible for TPS due to his two misdemeanor convictions (obstruction of officer and hit and run). 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.