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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: **SEP 21 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: 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 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 application because the applicant had been convicted of at least two misdemeanors in the United States.

On appeal, the applicant asserts that the director's decision is erroneous as she was not advised at the time of her trial of the immigration consequences of a guilty plea. The applicant states, "I intend to have a lawyer vacate this criminal record, I was charged with 5 misdemeanors because they charge me with one misdemeanor for each of my kids but it was only one incident."

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 record contains court documentation from the County Court of Broward County, Florida, which indicates that on August 4, 2009, the applicant was arrested for five counts of felony neglect child without great harm, a violation of Florida Statute 873.3(c). On September 2, 2009, the offenses were reduced and the applicant was charged with five misdemeanor accounts of violating Florida Statute 827.04(1)(a), contributing to the delinquency of a minor. The applicant was also charged with two misdemeanor counts of violating Florida Statute 316.6135(2), leaving child unattended/unsupervised in a motor vehicle. On or about April 10, 2010, the applicant was convicted of five counts of violating Florida Statute 827.04(1)(a). The applicant was placed on probation for one year, ordered to attend parenting classes and ordered to pay court costs. The remaining charges were dismissed. [REDACTED] and [REDACTED]

The applicant's assertion that the offenses above arose in a single occasion and, therefore, she has been convicted of a single misdemeanor offense cannot be accepted. While the determination of whether the applicant's crimes arose "out of a single scheme of criminal misconduct" may be relevant to an individual's removability under section 237 of the Act, this determination has no bearing on the applicant's eligibility for TPS. The applicant was charged with seven separate counts and she pled no contest to five separate offenses. *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. Therefore, the applicant has been convicted of five separate and distinct offenses.

In *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006), it was held that a conviction vacated for failure of the trial court to advise the alien defendant of the possible immigration consequences of a guilty plea is no longer a valid conviction for immigration purposes.

To date, the applicant has not provided any credible evidence to support her assertion that she had not been advised of the possible immigration consequences of a guilty plea by the trial court. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without certified documentation from the court indicating that the convictions have been vacated for underlying procedural or constitutional defect having to do with the merits of the case, the misdemeanor convictions continue to affect immigration consequences. *Matter of Adamiak, supra*, *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), *Matter of Roldan*, 22 I. & N. Dec. 512 (BIA 1999).

The applicant is ineligible for TPS due to her five 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 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.