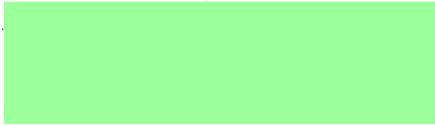


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

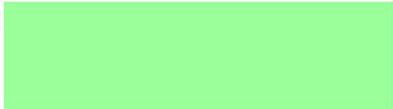


U.S. Citizenship  
and Immigration  
Services

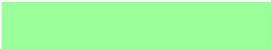


DATE: Office: CALIFORNIA SERVICE CENTER FILE:

**APR 03 2013**

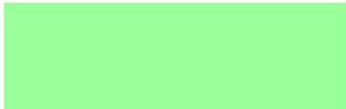


IN RE: Applicant:



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

ON BEHALF OF APPLICANT:



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,

Ron M. Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The re-registration application was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion 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 the applicant had been convicted of two or more misdemeanors in the United States and is therefore ineligible for TPS.

The AAO, in dismissing the appeal on June 20, 2012, concurred with the director's findings.

A motion to reconsider must state the reason for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy ... [and] must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion, counsel for the applicant asserts that the director erred in denying the applicant's re-registration application for TPS "because of the same old criminal charges that United States Citizenship and Immigration Services (USCIS) had previously held were not two separate conditions." Counsel contends that the applicant has not been twice convicted of a misdemeanor, but that the applicant has been convicted of one misdemeanor with two counts and is therefore, eligible for TPS. Counsel cites the case of *Mejia Rodriguez v. U.S. Dep't of Homeland Security*, 562 F.3d 1137 (11<sup>th</sup> Cir. 2009) in support of his assertions.

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).

The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if 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) of the Act.

In this case, the Federal Bureau of Investigation report dated December 1, 2011, indicates that on January 7, 2000, the applicant was arrested by the Fort Lauderdale Police Department of Florida for possession of marijuana and obstruction of justice, in violation of two distinct sections of the Florida Criminal Statute. A copy of the police report from Broward County, Florida, dated January 7, 2000, indicates that the applicant was arrested and charged with one count of

obstruction of justice and one count of possession of marijuana. The court disposition submitted by the applicant from The Circuit/County Court, in and for Broward County, Florida, dated March 8, 2000, indicates that the applicant pled *nolo contendere* to violating count one, resist/obstructing an officer and to count two, possession of cannabis. Adjudication of guilt was withheld and the applicant was ordered to pay a fine of \$70 for count one and \$140 for count two.

The applicant's assertions on motion that his two misdemeanor offenses arose from a single arrest and, therefore, should be counted as a single misdemeanor offense, cannot be accepted. The fact that the offenses arose from a common scheme does not preclude them from being counted as separate offenses. The applicant was arrested, charged and convicted of one count of resist/obstructing an officer in violation of Florida Statute section 843.02, and one count of Possession of Cannabis/Marijuana, in violation of Florida Statute section 893.13. As noted above, the applicant pled *nolo contendere* on the two misdemeanor offenses and the court ordered two separate punishments. Black's Law Dictionary, 314 (5th Ed., 1979), defines the term "count" to mean a separate and independent claim. It also indicates that the term "count" is used to signify the several parts of an indictment, each charging a distinct offense. In this case, the applicant was charged and convicted of violating two separate and distinct sections of Florida Criminal Statutes, both misdemeanors. Therefore, the applicant has been convicted of two separate and distinct offenses.

The applicant's reliance on *Mejia Rodriguez v. U.S. Dep't of Homeland Security*, *id* is misplaced and distinguishable. In the current case, the issue is whether the applicant's single arrest on January 7, 2000 for obstruction of justice and possession of marijuana qualifies as two misdemeanor offenses, which made him ineligible for TPS. But, in *Mejia Rodriguez*, the issue was whether a guilty plea and a finding of guilty, with a sentence of time served, qualified as a "conviction" under 8 U.S.C. §1101(a)(48) of the Act. The court in *Mejia Rodriguez* found that a guilty plea served as a "conviction" for immigration purposes. The court was not asked to determine whether Mr. *Mejia Rodriguez's* arrest in 1986 for possession of marijuana and driving with a suspended license amounted to one or two offenses. Therefore, the applicant's reliance on *Mejia Rodriguez* is misplaced.

The basis for the denial of the re-registration application and the subsequent appeal is due to the fact that the applicant had been convicted of two misdemeanors in the United States that rendered him ineligible for TPS. On motion, the applicant failed to submit any credible and objective evidence, pertinent case law or precedent decisions to establish that the director's decision was erroneous or contrary to the precedent decision, applicable law or Service policy. As such, the issue on which the underlying decisions were based has not been overcome on motion. The AAO will affirm its June 20, 2012 decision.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met as the applicant's stated reason for reconsideration is not supported by any pertinent precedent decisions to establish that the decision to deny re-registration of TPS was based on an incorrect application of law or Service

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policy when filed, or that the decision was incorrect based on the evidence of record at the time of the initial decision. Accordingly, the motion to reopen and reconsider will be dismissed and the previous decision of the AAO will not be disturbed.

**ORDER:** The motion is dismissed. The previous decision of the AAO dated June 20, 2012 is affirmed.