



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: APR 04 2013

Office: NEBRASKA 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 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,

Ron Rosenberg
Acting 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 on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Haiti who was granted 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 misdemeanors in the United States. The director also denied the re-registration application because he found the applicant inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to his drug-related conviction.

On appeal, the applicant asserts that the conclusion made on his previous application was in error because "I was lacking documents please accept my appeal I have extra evidence to support my argument."

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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC § 802). Section 212(a)(2)(A)(i)(II) of the Act.

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 July 26, 2012, reflects the applicant's criminal history in the states of New York and Pennsylvania as follows:

1. On or about February 25, 2005, the applicant was arrested by the Pelham Village Police Department of New York for robbery forcible theft with use of instrument.
2. On October 27, 2009, the applicant was arrested by the Mamaroneck Town Police Department of New York for possession of forged instrument!
3. On December 22, 2011, the applicant was arrested by the Reading Police Department of Pennsylvania for three counts of possession of a controlled substance and "not possess-use-transfer firearm."

In response to the notice of August 24, 2012, which requested the applicant to submit certified judgment and conviction documents from the courts for all arrests, the applicant provided:

- Court documentation in Criminal Action no. [REDACTED] from the Court of Common Pleas of Berks County, Pennsylvania, which indicates that on April 20, 2012, the applicant was placed on probation for one year and ordered to pay a fine and court cost for possession of marijuana, a violation of Title 35 P.S. § 780-113(a)(16), and criminal conspiracy, a violation of Title 18 Pa. Cons. Stat. § 903(a)(1), both misdemeanors.
- Court documentation in Case no. [REDACTED] from the Pelham Town Court of New York, which indicates that a disposition was issued on October 27, 2005 and the record was sealed. It is noted that the applicant was seventeen years of age at the time of his arrest on February 19, 2005.
- Court documentation in Case no. [REDACTED] from Mamaroneck Town Court, Westchester County, New York, which indicates that on July 26, 2010, the applicant pled guilty to violating NYPL § 170.20, possession of a forged instrument in the third degree, a Class A misdemeanor. On October 4, 2010, the applicant was ordered to pay a fine.

On appeal, the applicant submits an additional copy of the court disposition from Berks County Court of Common Pleas, which affirms the two misdemeanor convictions mentioned above. The applicant also submits court documentation in Case no. [REDACTED] which indicates that on September 27, 2012, the applicant was convicted of and ordered to pay a fine for violating NYPL § 240.20, disorderly conduct, a violation.

The applicant is ineligible for TPS due to his misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Without the police report or complaint/indictment indicating the amount of marijuana that was in the applicant's possession, the applicant will remain inadmissible under section 212(a)(2)(A)(i)(II) of the Act due to his drug-related conviction. Consequently, the director's decision to deny the re-registration application on these grounds will be affirmed.

The re-registration 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.