



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE:

APR 10 2013

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. § 1254

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 Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The re-registration application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The matter is now before the Administrative Appeals Office on appeal. The case will be remanded for further consideration and action.

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.

On appeal, counsel asserts that the applicant has only one misdemeanor conviction as he was arrested on November 1, 2009, charged on November 2, 2009 and sentenced on August 27, 2010 for driving under the influence.

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 Federal Bureau of Investigation report dated June 2, 2011, indicates that on November 1, 2009, the applicant was arrested by the Sheriff's Office of Broward County, Florida for driving under the influence - 1st offense, improper stop stand park, driving while license suspended - 1st offense, and driving with .15 percent or more alcohol in the blood with a person under the age of 18.

In response to the notice dated December 21, 2011, which requested the applicant to submit certified copies of the court records for all arrests, the applicant provided the police booking report and certified court documentation in Case no. [REDACTED] Counsel, on appeal, also provides a copy of Case no. [REDACTED] The court documents indicate that the applicant was charged with count one, driving under the influence with a blood alcohol level

above 0.20%, count two, driving under the influence, count three, driving while license is suspended, and count four, improper stop/stand/park. On August 27, 2010:

1. The applicant pled *nolo contendere* and was convicted of driving under the influence with a blood alcohol level above 0.20%, a violation of Florida Statute 316.193(4). The applicant was ordered to pay a fine, court cost, attend a driving while intoxicated school, perform 50 hours of community service and was placed on probation for nine months.
2. The charge of driving under the influence was *nolle prosequi*.
3. The applicant pled *nolo contendere* to driving while license is suspended, a violation of Florida Statute 322.34(2). Adjudication of guilt was withheld.
4. The charge of improper stop/stand/park was dismissed.

Although the court documents indicate that a plea was entered for driving while license is suspended, the court ordered no form of punishment or penalty for the offense. Therefore, the applicant was not convicted of this offense within the meaning of section 101(a)(48)(A) of the Act.

The applicant has one misdemeanor conviction and it does not render the applicant ineligible for TPS under the provisions of section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a). Therefore, the director's decision to deny the re-registration application will be withdrawn.

The record, however, reflects that the validity period of the applicant's fingerprint check has expired. Accordingly, the case will be returned for the purpose of sending the applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements. Following completion of this requirement, the director will render a new decision. Should the decision be adverse, the director must give written notice setting forth the specific reasons for the denial pursuant to 8 C.F.R. § 103.3(a)(1)(i), and the applicant shall be permitted to file an appeal without fee.

ORDER: The case is remanded to the director for further action consistent with the above and entry of a decision.