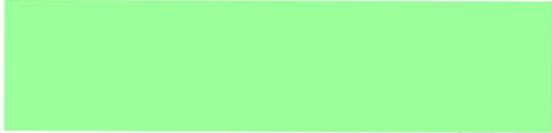




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: DEC 24 2013

OFFICE: CALIFORNIA 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. § 1254a

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The re-registration application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is 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 record reveals that the applicant filed a TPS application during the initial registration period, which had been approved, and subsequently re-registered for TPS on October 22, 2012.

The director denied the re-registration application on July 19, 2013, because the applicant failed to submit requested court documentation relating to his criminal record. The director noted that the applicant did not respond to a March 14, 2013 notice and failed to provide final court dispositions for two felony charges, specifically:

- 1) On [REDACTED] the applicant was charged with aggravated battery, in violation of Florida Statute Section FL 784.045, a felony; and,
- 2) On [REDACTED] the applicant was charged with criminal registration, in violation of Florida Statute Section FL 775.13, a felony.

The director determined that the applicant was ineligible for TPS for failing to provide the final court dispositions for the above charges.

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).

“Felony” means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception when the offense is defined by the state as a misdemeanor and the sentence actually imposed is one year or less, regardless of the term actually served. Under this exception, for purposes of 8 C.F.R. § 244 of the Act, the crime shall be treated as a misdemeanor. 8 C.F.R. § 244.1.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by U.S. Citizenship and Immigration Services (USCIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

On March 14, 2013, the applicant was requested to provide certified court documents to include the final dispositions of his arrests and/or charges on [REDACTED] aggravated battery, and on [REDACTED], for criminal registration.

Citing 8 C.F.R. § 244.9(a) and section 244(c)(2) of the Act, the director, on July 19, 2013, denied the application because he found that the applicant had failed to submit the requested final court disposition relating to his arrest and/or charges.

On appeal, the applicant states that the aggravated battery charge is still pending before the court, and submits the following documents:

- 1) A Judgment dated [REDACTED], from the Criminal Division of the Circuit Court of the [REDACTED] Judicial Circuit in and for [REDACTED] whereby the applicant pled guilty to one count of Felony Battery, in violation of Florida statute Section FL 784.041, a third degree felony (Case # [REDACTED]). The court ordered adjudication of guilt withheld.
- 2) An Order of Probation dated [REDACTED] from the Criminal Division of the Circuit Court of the [REDACTED] Judicial Circuit in and for [REDACTED] pertaining to Case # [REDACTED]. The Order of Probation reflects that the applicant entered a plea of guilty; that the court ordered and adjudged the adjudication of guilt withheld and ordered probation for a period of two (2) years; and, ordered restitution in the amount of \$7,500, community service, and other restrictions.
- 3) A State of Florida Department of Corrections Probation record of Public Service Hours, dated August 8, 2012, showing a completed work hours periodic report.

The issue in this proceeding is whether the applicant has one or more felony convictions and is ineligible for TPS.

Section 244(c)(2)(B)(i) of the Act provides that an alien shall not be eligible for temporary protected status if the Attorney General, now the Secretary, Department of Homeland Security (Secretary), finds that the alien has been convicted of any felony or 2 or more misdemeanors committed in the United States.

Under section 101(a)(48) of the Act:

- (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.

(B) Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.

The applicant's assertion that his case is still pending is not supported by the record. It is clear from the documentation from the Criminal Division of the Circuit Court of the [REDACTED] Judicial Circuit in and for [REDACTED] pertaining to Case # [REDACTED] that the applicant entered a guilty plea on [REDACTED] and the court ordered some form of penalty and restraint on the applicant's liberty. Therefore, for immigration purposes the applicant has been convicted of this felony offense under section 101(a)(48) of the Act, whether or not the applicant had fulfilled his term of probation.

In addition, on [REDACTED] the applicant was charged with Criminal Registration, in violation of Florida Statute, Section FL 775.13, a felony. The final disposition for this charge has not been provided.

Therefore, the applicant has a felony conviction and is ineligible for TPS pursuant to section 244(c)(2)(B)(i) of the Act. The applicant is also ineligible for TPS because of his failure to provide the final disposition for the charge of criminal registration necessary for the adjudication of his application. Therefore, the director's decision to deny the re-registration application is affirmed.

The 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.