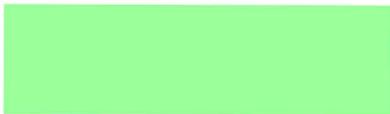


(b)(6)



U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



DATE **JUL 19 2013** OFFICE: OAKLAND PARK, FL

FILE: 

IN RE: APPLICANT: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 244(c)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1254a(c)(2)

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 that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Oakland Park, Florida, 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. On November 5, 1998, the applicant was convicted of battery under Florida statute §784.03. The Field Office Director additionally found the applicant had a felony conviction for aggravated battery under Florida statute §784.045. He was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed crimes involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 244(c)(2) of the Act, 8 U.S.C. § 1254a(c)(2), in order to remain in the United States with his U.S. citizen children.

The Field Office Director concluded that the applicant provided insufficient evidence demonstrating a qualifying relative would experience extreme hardship as defined by section 212(h) of the Act and denied the application accordingly. *See Decision of Field Office Director* dated May 30, 2012.

On appeal, the applicant contends his spouse and children need him in the United States, and that he has learned from his past mistakes. He adds he needs the Temporary Protected Status (TPS), and his conviction was a one-time matter.

The record includes, but is not limited to, other applications and petitions, documentation of criminal and immigration proceedings, evidence of birth, marriage, residence, and citizenship, and financial documents. The entire record was reviewed and considered in rendering a decision on the appeal.

In the denial, the Field Office Director indicated the applicant was not eligible for adjustment of status under section 245(a) of the Act due to inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. *See Decision of Field Office Director* dated May 30, 2012. The AAO notes that although USCIS electronic records indicate that the applicant filed an I-485 Application for Adjustment of Status in 2009, that application is not contained in the record. Further, there is no indication that the applicant has any underlying petition or other eligibility through which to adjust his status. His I-601 waiver application indicates he is requesting a waiver of inadmissibility under section 244(c)(2) of the Act in order to obtain TPS status. As such, the AAO will review the present appeal as an application under section 244(c)(2) of the Act to obtain a waiver of admissibility for TPS status under section 244(a)(1) of the Act.

Section 244(c)(1) of the Act states, in pertinent part:

Aliens Eligible for Temporary Protected Status. (1) In General – (A) Nationals of designated foreign states. Subject to paragraph (3), an alien, who is a national of a state designated under subsection (b)(1)... meets the requirements of this paragraph only if- ...

(iii) the alien is admissible as an immigrant, except as otherwise provided under paragraph (2)(A), and is not ineligible for temporary protected status under paragraph (2)(B)...

Section 244(c)(2) of the Act states, in pertinent part:

(B) Aliens Ineligible. An alien shall not be eligible for temporary protected status under this section if the [Secretary] finds that – (i) the alien has been convicted of any felony or two or more misdemeanors committed in the United States...

Section 101(a)(48) of the Act provides:

(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.

The record reflects that the applicant was arrested on August 12, 1998 in [redacted] Florida. He was charged with aggravated assault under Florida statute §784.045, and with battery (domestic violence) under Florida statute §784.03(1). [redacted] August 12, 1998. On November 5, 1998, the applicant pled nolo contendere to both charges. *See disposition*, November 5, 1998. Consequently, a [redacted] judge found the applicant guilty of battery, and withheld adjudication on the assault charge. *Id.* The applicant was ordered to serve 90 days in jail, 18 months of probation, and to complete the “glass house” program. *Id.*

Despite withholding adjudication on the assault charge, the applicant entered a plea of nolo contendere and was ordered to serve jail time and probation. As such, the AAO finds in addition to a battery conviction under Florida statute 784.03(1), the applicant also has a conviction as defined by section 101(a)(48) of the Act for aggravated assault under Florida statute §784.045.

This aggravated assault conviction renders the applicant ineligible for TPS under section 244(c)(2)(B) of the Act because it constitutes a conviction for a felony. Section 244.1 of the Code of Federal Regulations indicates a felony is defined as a “crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any except: 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 such alien actually served...” 8 C.F.R. §244.1 (2013).

Violation of Florida statute §784.045 constitutes violation of a felony as defined by 8 C.F.R. § 244.1 (2013). Florida statute §784.045 states,

Aggravated battery. (1)(a) A person commits aggravated battery who, in committing battery:

1. Intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or
2. Uses a deadly weapon.

(b) A person commits aggravated battery if the person who was the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant.

(2) Whoever commits aggravated battery shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Fl. Code Ann. § 784.045 (1998). In the present matter, the record reflects the crime was committed in the United States, and is defined as a felony, not a misdemeanor. Furthermore, as a second degree felony, a person convicted of aggravated assault is punishable by a term of imprisonment of not more than 15 years. Fl. Code Ann. § 775.082 (1998). The AAO therefore finds the applicant has been convicted of a felony, and is consequently ineligible for temporary protected status pursuant to section 244(c)(2)(B) of the Act. As such, no purpose would be served in adjudicating the present waiver application.¹

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

¹ As the present I-601 waiver application was submitted for TPS status under section 244 of the Act, the AAO will not determine whether the applicant requires a waiver under section 212(h) of the Act for purposes of adjustment of status