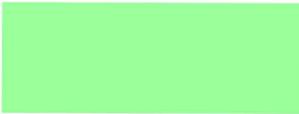


(b)(6)

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

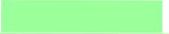


U.S. Citizenship
and Immigration
Services



DATE: OCT 04 2013

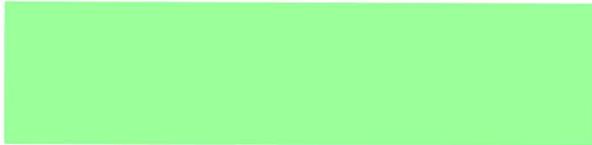
Office: CALIFORNIA SERVICE CENTER

FILE: 


IN RE: Applicant: 

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

ON BEHALF OF APPLICANT:



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.

Thank you,

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

for Ron Rosenberg
Chief, Administrative Appeals Office

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

The applicant claims to be 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 director denied the application because it was determined that the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel asserts that the applicant was never convicted of the offenses within the meaning of section 101(a)(48)(A) of the Act.

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.

In response to a Request for Evidence dated March 22, 2013, which requested the applicant to provide certified judgment and conviction documents from the courts for all arrests, the applicant provided:

- The arrest report of January 23, 2008 by the [REDACTED] Police Department (Florida) relating to a violation of no commercial vehicle marking.
- Certified court documentation in Case no. [REDACTED] from the Circuit and County Courts of the [REDACTED], which indicates that on September 25, 2008, a *nolle prosequi* was entered for the charge of no commercial vehicle marking.

- The arrest report of September 3, 2002, from the [REDACTED] Police Department (Florida) relating to violations of purchase of marijuana and possession of marijuana –less than 20 grams.
- A certified court document from the Circuit and County Courts of the [REDACTED] Judicial Circuit of Florida, which indicates that on September 30, 2002, no action was taken on the felony Case no. [REDACTED] and that the case was transferred to County Court. On November 15, 2002, adjudication of guilt was withheld and the applicant was ordered to pay a fine for violating Florida Statute 893.13(6)(b), possession of marijuana - less than 20 grams, a misdemeanor. Case no. [REDACTED]
- The arrest report of January 20, 2011 for violating possession of undersized fish/snapper, over the limit fish/snapper and undersized triggerfish.
- Certified court documents in Case no. [REDACTED] from the Circuit and County Courts of the [REDACTED] Judicial Circuit of Florida, which indicates that on July 27, 2011, the applicant pled guilty to violating Florida Statute 68B-14-0035(7)(d), possession of undersized snapper, a misdemeanor of the second degree. Adjudication of guilt was withheld and the applicant was ordered to attend a fish and wildlife course and pay court costs. The remaining offenses were dismissed.

Based upon the court documents submitted the director determined that the applicant had been convicted of two misdemeanors and denied the application on May 16, 2013.

On appeal, counsel submits the court transcripts relating to Case(s) no. [REDACTED] and [REDACTED]

The court transcript in Case no. [REDACTED] does not indicate that the applicant entered any plea, admitted to any facts sufficient to warrant a finding of guilty nor did the court find the applicant guilty of the offense. Therefore, the applicant was not convicted of the above drug offense within the meaning of section 101(a)(48)(A) of the Act. It is noted that the applicant filed a Form I-601, Application for Waiver of Grounds of Inadmissibility, which was approved on March 15, 2011.

However, the court documents submitted in response to the Request for Evidence in Case no. [REDACTED] clearly indicate that the applicant pled guilty to violating Florida Statute 68B-14-0035(7)(d), and that the judge ordered some form of punishment and/or penalty to the charge

above.¹ Therefore, the applicant has been convicted of this misdemeanor offense within the meaning of section 101(a)(48)(A) of the Act.

The applicant has one misdemeanor conviction for violating Florida Statute 68B-14-0035(7)(d) and it does not render him ineligible for TPS under the provisions of section 244(c)(2)(B)(i) of the Act and the related regulation in 8 C.F.R. § 244.4(a). Therefore, the director's decision to deny the TPS 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.

¹ *Matter of Cabrera*, 24 I&N Dec. 459 (BIA 2008) held that the imposition of costs and surcharges in the criminal sentencing context constitutes a form of "punishment" or "penalty" for purposes of establishing that an alien has suffered a "conviction" within the meaning of section 101(a)(48)(A) of the Act.