



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **OCT 23 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:  
[REDACTED]

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,

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 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 re-registration application because the applicant had been convicted of a felony in the United States.

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 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.

On appeal, counsel asserts that the director's decision is in error as it was based on the erroneous ground that the applicant was a convicted felon “that does not meet the eligibility criteria established in the Immigration and Nationality Act. Pursuant to 8 C.F.R. 244.” Counsel asserts that the applicant was previously granted TPS in 2010 and 2011 and that at the time of the re-designation for Haiti, there was no issue about the applicant's qualification.

Counsel asserts that the applicant has not been presented with any record of evidence of any felonious action, any record of prosecution or conviction. Counsel, citing to Title 8, U.S.C. § 1325, asserts that the alleged offense, if proven, does not rise to a criminal act but is subject to a civil penalty. Citing *Padilla v. Kentucky*, 130 S. Ct. 1473 (U.S. 2010)<sup>1</sup> counsel states, “[a]ssuming, arguendo, the fraudulent entry is a criminal violation, Applicant was never advised of the immigration consequences by neither the U.S. Magistrate nor his U.S. Public Defender as his legal counsel.”

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<sup>1</sup> Counsel must inform a client whether his plea carries a risk of deportation.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record reflects that on November 8, 2009, the applicant arrived at the Miami International Airport and attempted to gain admission into the United States by presenting to the inspecting officer a Haitian passport and a Form I-551, Resident Alien Card, issued to another individual.<sup>2</sup> On November 9, 2009, a Form I-867A, Record of Sworn Statement in Proceedings under section 235(b)(1) of the Act, was executed in his native language and while under oath, the applicant admitted that the Haitian passport and Form I-551 did not belong to him and that he was aware it was illegal to present fraudulent documents for admission into the United States.

The applicant was found inadmissible to the United States, pursuant to sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I)<sup>3</sup> of the Act. On January 7, 2011, the applicant filed a Form I-601, Application for Waiver of Grounds of Inadmissibility.

Contrary to counsel's assertion, the applicant was not convicted of violating Title 8, U.S.C. § 1325. On November 17, 2009, in the U.S. District Court, [REDACTED] Division, the applicant pled guilty to and was adjudicated guilty of count one of the indictment, Title 18, U.S.C. § 1544, misuse of a passport, a felony. The applicant was sentenced to time served, placed on supervised release for two years and ordered to pay \$100 in penalty assessment. The remaining count was dismissed. Case no. [REDACTED]. The applicant was released from the federal detention center on December 22, 2009 and into the custody of Immigration and Customs Enforcement.

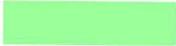
It is noted that the record contains a letter dated January 25, 2010, from the applicant's former counsel acknowledging the above conviction and of the applicant's ineligibility for TPS.

The AAO is not the appropriate forum to determine constitutional issues involving the applicant's criminal record. Rather, those issues are within the jurisdiction of the judicial court. The AAO may only look to the judicial records to determine whether the person had been convicted of the crime, and may not look behind the conviction to reach an independent determination concerning guilt or innocence. *Pablo v. INS*, 72 F.3d 110, 113 (9th Cir. 1995); *Gouveia v. INS*, 980 F.2d 814, 817 (1st Cir. 1992); and *Matter of Roberts*, 20 I&N Dec. 294 (BIA 1991). Further, counsel has not provided on appeal evidence to support his assertion that the applicant had not been advised of the possible immigration consequences of a plea by either his counsel or the trial court. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The AAO concludes that the felony conviction continues to effect immigration consequences.

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<sup>2</sup> The applicant was also found to be in possession of a Florida driver's license, a social security card and a birth certificate belonging to owner of the Haitian passport.

<sup>3</sup> Section 212(a)(7)(A)(i)(I) of the Act shall not be applied in the determination of an alien's inadmissibility under section 244 of the Act. Section 244(c)(2)(A)(i) of the Act; 8 C.F.R. § 244.3(a).



The applicant is ineligible for TPS due to his felony conviction. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). There is no waiver available, even for humanitarian reasons, of the requirements stated above. Consequently, the director's decision to deny the application for this reason will be affirmed.

Finally, while the appeal before the AAO is for the re-registration application, it must be noted that the director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. pursuant to 8 C.F.R. § 244.14(a)(1).

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.