



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **SEP 06 2013**

Office: NEBRASKA SERVICE CENTER

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. 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,


for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a 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.

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.

"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 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 August 20, 2012, the applicant was granted 12 weeks to provide updated court documents¹ to include the final disposition of his arrest on November 13, 2010 for rape.

In response, the applicant submitted a certified criminal docket case summary in Case no. [REDACTED] from the Commonwealth of Massachusetts Plymouth Superior Court, which indicates that the three counts of rape (M.G.L. chapter 265 § 22(A)), committed on November 13, 2010, is an active case with no final disposition. The case was continued to November 13, 2012.

¹ An earlier request was issued on September 6, 2011, and the applicant provided certified court documentation indicating that the case was pending.

Citing 8 C.F.R. § 244.9(a), the director, on November 21, 2012, denied the application because he found that the applicant had failed to submit requested final court disposition relating to his arrest on November 13, 2010 for rape.

On appeal, counsel asserts that the regulations do not bar a grant of TPS where there is an open criminal charge. Counsel, indicates at Part 2 on the appeal form that a brief and/or additional evidence would be submitted to the AAO within 30 days.² However, more than eight months later, no additional correspondence has been presented by counsel or the applicant.

Because the court proceedings were pending at the time the applicant provided the updated court documents,³ he cannot be found ineligible for TPS due to failure to provide the final disposition.

However, the applicant, on appeal, had the opportunity to present the finding(s) from the court hearing of November 13, 2012, but failed to do so. To meet his burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The applicant is ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Therefore, the application will remain denied.

The final court disposition of the applicant's arrest on November 13, 2010, shall be addressed by the director in any future proceedings.

While not the basis for the dismissal of the appeal, it is noted that the record reflects that on July 22, 2004, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, [REDACTED] which was approved on August 12, 2005. Because the applicant failed to remove the conditions of his conditional resident status, on August 13, 2007, said status was terminated. A notice dated July 30, 2008 was issued informing the applicant of the termination.

ORDER: The appeal is dismissed.

² Every appeal submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. 8 C.F.R. § 103.2(a)(1). The Form I-290B instructs the applicant to submit a brief and additional evidence to the AAO within 30 days of filing the appeal.

³ The envelope containing the applicant's response was postmarked November 9, 2012 and received at the Nebraska Service Center on November 13, 2012.