



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 27 2014**

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. 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, California Service Center. The applicant has appealed the re-registration application and the matter is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a native and citizen of Haiti who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

On May 9, 2014, the director denied the re-registration application because the applicant had been convicted of two misdemeanors in the United States.

On appeal, the applicant through counsel asserts that the director denied the application in error, and provides additional certified copies of the court documents relating to the applicant's convictions.

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.

Section 101(a)(48)(B) of the Act provides, "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 record contains certified court documents from the 15th Judicial Circuit Court for County, Florida, which indicate:

1. On November 4, 2008, the applicant pled guilty to violating Florida Statute 322.03(5), driving while license has been expired for more than four months, a

misdemeanor of the second degree. Adjudication of guilt was withheld, and the applicant was ordered to pay a fine. Case no. [REDACTED]

2. On March 27, 2006, the applicant pled guilty to violating Florida Statute 322.03(5), driving while license has been expired for more than four months, a misdemeanor of the second degree. Adjudication of guilt was withheld, and the applicant was ordered to pay a fine and court costs. Case no. [REDACTED]

On appeal, counsel cites memoranda issued by U.S. Citizenship and Immigration Services (USCIS) on January 17, 2010, and January 21, 2011, to support the argument that the convictions above should not disqualify the applicant from maintaining TPS. Counsel's assertions are without merit as the memorandum of January 17, 2010 specifically pertains to traffic infractions and violations committed in the state of New York. The state of Florida has not classified the above offenses to be a violation or an infraction. Likewise, the memorandum dated January 21, 2011, specifically pertains to certain offenses where the court has issued a "no jail" or "no incarceration" certification. The court documents submitted do not indicate that a "no jail" or "no incarceration certification" had been issued and no certification was presented on appeal.

The regulation clearly states that a misdemeanor is a crime "*punishable* by imprisonment for . . . one year or less, *regardless of the term . . . actually served.*" [Emphasis added.] Likewise, the regulation clearly states that a criminal violation will not be considered a misdemeanor only if it is "*punishable* by imprisonment for a maximum term of five days or less." [Emphasis added.] The operative word is "punishable," which indicates that a misdemeanor is defined under the regulation by the maximum imprisonment possible for the crime under Florida law, not the specific prison term meted out by the judge in a particular case. Florida law provides that a person convicted of a misdemeanor of the second degree is punishable by imprisonment of not more than 60 days in jail. *See* Florida statute 775.082(4)(b). Therefore, the offenses above qualify as misdemeanors as defined for immigration purposes in 8 C.F.R. § 244.1.

The applicant remains ineligible for TPS due to her two misdemeanor convictions. 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.

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.

Finally, while not the basis for the dismissal of the appeal, it is noted that on December 6, 1999, a removal hearing was held and the applicant was ordered removed from the United States. The applicant appealed the decision, and on February 3, 2000, it was rejected by Board of

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Immigration Appeals. On March 24, 2000, a Form I-205, Warrant of Removal/Deportation, and a Form I-294, Warning to Alien Ordered Removed or Deported, were issued.

ORDER: The appeal is dismissed.