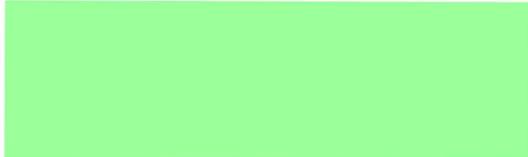




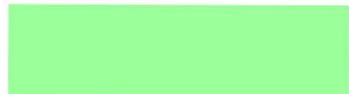
U.S. Citizenship
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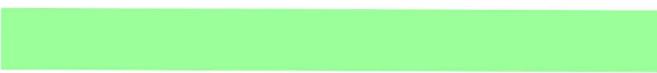


DATE: FEB 11 2014

Office: CALIFORNIA 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: 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.

Thank you,

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

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, California Service Center.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

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.

The director denied the re-registration application because the applicant failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant stated that he had appealed the felony conviction and that the court "changed it decision from felony to misdemeanor." The applicant submitted court documentation indicating that on November 13, 2008, the charge of child abuse was *nolle prosequi*.

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 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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The record reflects that on June 9, 2005, the applicant was arrested by the Sheriff's Office in [REDACTED] for lewd or lascivious molestation committed upon a person less than 12 years of age, a violation of Florida Statute 800.04(5)(b). On March 14, 2007, the applicant pled guilty to this 1st degree felony offense and was sentenced to 18 months of community control followed by 3 ½ years of probation. [REDACTED]

The record also reflects that on October 14, 2007, the applicant was arrested or received by the Sheriff's Office in Broward County for violation of probation, a violation of Florida Statute 948.06.

On appeal, the applicant submitted court documentation in Case no. [REDACTED], indicating that on November 13, 2008, the child abuse charge was *nolle prosequi*.

On December 24, 2013, the AAO sent a notice to the applicant informing him that his appeal was going to be dismissed as the court documentation submitted was incomplete. The applicant was advised that the court documentation did not support his assertion that the felony offense had been reduced to a misdemeanor, and that the court documentation was silent as to its reason for the dismissal of the charge. The applicant was granted 30 days in which to submit either certified complete court proceedings or a certified letter from the State Attorney's office outlining the basis for the dismissal in [REDACTED]

The applicant, in response, submits certified documents from the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida, which consisted of:

- Court documents relating to the indictment and subsequent dismissal of Case no. [REDACTED]
- The applicant's Motion to Suppress Statements dated January 17, 2008.
- An Order filed July 24, 2008, granting the applicant's motion to suppress statements. The Order indicates, in part, "the State has fallen short of proving by a preponderance of the evidence that the Defendant voluntarily made a knowingly waiver of his constitution rights to remain silent and to counsel."

The applicant has provided certified documentation from the court indicating that his conviction of violating Florida Statute 800.04(5)(b) has been vacated for constitutional defect having to do with the merits of the case. Therefore, the felony conviction no longer affects immigration consequences. *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), *Matter of Roldan*, 22 I. & N. Dec. 512 (BIA 1999). Consequently, the director's decision to deny the re-reregistration 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.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The case is remanded to the director for further action consistent with the above and entry of a decision.