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



U.S. Citizenship
and Immigration
Services

[REDACTED]

DATE: **AUG 05 2015**

[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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", written over a horizontal line.

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, withdrew the applicant's temporary protected status and denied an application for re-registration. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is 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. § 1254a. On July 2, 2014, the director withdrew TPS and denied the application for re-registration because the applicant had been convicted of a felony in the United States. The director also denied the application because the applicant was found inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to his conviction of false use of a passport.

On appeal, the applicant provides a statement describing the circumstances that led to the arrest and subsequent conviction of false use of a passport. The applicant contends that this conviction is a miscarriage of justice as he did not know the passport he was using was fake, he believed he was using his own Haitian passport, and that he had ineffective representation during the court proceedings.

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. 8 C.F.R. § 244.14(a)(1).

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. 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.

The record reflects that on or about November 20, 2005, the applicant entered [REDACTED] U.S. Virgin Islands without inspection. On January 13, 2006, the applicant, seeking admission from [REDACTED] to [REDACTED] Florida, presented, to a Custom and Border Protection Official, a Haitian passport which appeared to be re-stitched and contained an altered stamp date. On [REDACTED]

2006, in the District Court of [REDACTED] the applicant pled guilty to and was convicted of violating 18 U.S.C. § 1543, false use of a passport. For violating this felony offense the applicant was sentenced to time served, ordered to pay court costs and placed on supervised release for two years.

On appeal, the applicant asserts that he had no knowledge that the passport was fraudulent. The applicant asserts, in part:

In Haiti when someone needs a passport, one has to pay a third party either people from a travel agency or one of the individuals that work in front of the Immigration bureau to help you getting the passport. Up to this date the Haitian authority is still not organized in the proper way for someone to apply for a passport. It is impossible for a regular citizen to discover if a passport is fact or not.

The applicant also states due to the incompetence of his attorney during the court proceedings, he was wrongly convicted.

This office, however, is not the proper forum to determine constitutional issues involving the applicant's conviction. Rather, those issues are within the jurisdiction of the judicial court. Collateral attacks upon an applicant's conviction "do not operate to negate the finality of [the] conviction unless and until the conviction is overturned." *Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996). We "cannot go behind the judicial record to determine the guilt or innocence of the alien." *Id.* (citing *Matter of Fortis*, 14 I&N Dec. 576, 577 (BIA 1974); see also *Matter of Khalik*, 17 I&N Dec. 518, 519 (BIA 1980)). As the applicant's conviction has not been overturned, it must be considered in this present TPS application.

When the applicant was convicted on [REDACTED] 2006, 18 U.S.C. § 1543 stated, in pertinent part:

Whoever falsely makes, forges, counterfeits, mutilates, or alters any passport or instrument purporting to be a passport, with intent that the same may be used; or

Whoever willfully and knowingly uses, or attempts to use, or furnishes to another for use any such false, forged, counterfeited, mutilated, or altered passport or instrument purporting to be a passport, or any passport validly issued which has become void by the occurrence of any condition therein prescribed invalidating the same— Shall be fined under this title, imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense), or both.



In this case, a conviction under 18 U.S.C. § 1543 is punishable by imprisonment for a term of more than a year. As such, the applicant has a felony conviction, and is therefore ineligible for TPS. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

As the applicant is not eligible for TPS because he has a felony conviction, we need not address whether the conviction qualifies as a conviction for a crime involving moral turpitude under section 212(a)(2)(A)(i)(I) of the Act.

There is no waiver available to an alien found ineligible for TPS under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a), for a felony conviction. Consequently, the director's decision to withdraw TPS and deny the application for re-registration will be affirmed.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.