



U.S. Citizenship
and Immigration
Services

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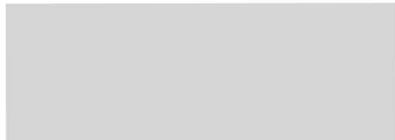
DATE: **AUG 18 2015**

FILE: [REDACTED]
APPLICATION RECEIPT #: [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:



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 be "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, simultaneously withdrew the applicant's Temporary Protected Status and denied an application for re-registration. The matter is now before the Administrative Appeals Office (AAO) on appeal. 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. § 1254a. On October 28, 2014, the director withdrew TPS and denied the re-registration application because the applicant had been convicted of two or more misdemeanors in the United States.

On appeal, counsel claims that the applicant was not aware that his driver's license had been suspended on two separate occasions. Counsel cites to a memorandum issued by U.S. Citizenship and Immigration Services (USCIS) on January 21, 2011, to support the assertion that the applicant's traffic violations should not disqualify him from maintaining TPS.

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. 8 C.F.R. § 244.1. 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. *Id.*

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 contains court documents from the Circuit Court in and for [REDACTED] County, Florida, which reflect the following:

1. On [REDACTED] the applicant was arrested and charged with violating Florida Statute 322.16(1), driver's license restriction violation. On [REDACTED] the applicant pled no contest to violating this misdemeanor of the second degree offense. Adjudication of guilt was withheld and the applicant was ordered to pay a fine.
2. On [REDACTED] the applicant was arrested and charged with violating Florida Statute 320.02(1), failure to register motor vehicle. On [REDACTED] the applicant pled guilty to violating this misdemeanor of the second degree offense. Adjudication of guilt was withheld and the applicant was ordered to pay a fine.

3. On [REDACTED] the applicant was arrested and charged with violating Florida Statute 322.03(5), driver's license expired more than four months. On [REDACTED] the applicant pled guilty to violating this misdemeanor of the second degree offense. The applicant was ordered to pay a fine.
4. On [REDACTED] the applicant was arrested and charged with violating Florida Statute 322.34(2) driving while license suspended with knowledge. On [REDACTED] the applicant pled guilty to violating this misdemeanor of the second offense degree. Adjudication of guilt was withheld.

In Florida, misdemeanors of the second degree carry a maximum sentence of 60 days in jail and a 500 dollar fine and, accordingly, qualify as misdemeanors for immigration purposes. Based upon the record, the applicant has been convicted of three misdemeanors, on [REDACTED] and [REDACTED] as he pled guilty or no contest and was ordered to pay a fine for these misdemeanors of the second degree.

The memorandum cited by counsel pertains to certain offenses where the Florida courts have issued a "no jail" or "no incarceration" certification. For purposes of the TPS statute and regulations, USCIS has determined that a Florida offense that has such certification does not meet the definition of a misdemeanor under 8 C.F.R. § 244.1 as it would not constitute an offense punishable by imprisonment.

However, on appeal, counsel acknowledges that the applicant has not been issued such a certification. Counsel contends that the applicant did not know, at the time of the disposition of his offenses, to request such certification.

We 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).

The applicant remains ineligible for TPS due to his three misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the re-registration application and withdraw TPS for this reason 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.