



U.S. Citizenship
and Immigration
Services

(b)(6)



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:

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,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director California Service Center, denied the application. 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 August 4, 2014, the director denied the application for re-registration because the applicant had been convicted of a felony in the United States.

On appeal, the applicant acknowledges his felony conviction, but states that it happened a long time ago and that he has not been in trouble with the law since then. The applicant requests that his application be reconsidered, as he has a family to support in Haiti and the United States.

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.

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 documentation from the County Court for the City and County of [REDACTED] Colorado, which indicates that on [REDACTED] the applicant was found guilty of harassment-stalking, a violation of CRS 18-9-111, a sixth degree felony. The applicant was placed on probation for one year and ordered to attend a domestic violence counseling program and pay a fine and court costs.

The applicant’s statements made on appeal are noted, but the applicant must meet the eligibility requirements at the time an application is filed, and at any time thereafter. 8

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NON-PRECEDENT DECISION

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C.F.R. § 244.14(a)(1). There is no waiver available, even for humanitarian reasons, of the requirements stated above. The applicant remains ineligible for TPS due to his felony conviction. 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 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.