



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 26 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,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, withdrew the applicant's temporary protected status and denied the 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 was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a. On June 25, 2014, the director withdrew TPS and denied the application for re-registration because the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant asserts that he has not been convicted of a felony or two or more misdemeanors in the United States. The applicant submits court documentation relating to some of his arrests.

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. 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.

We conduct appellate review on a *de novo* basis. See *Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Throughout the application proceedings, the applicant has submitted certified court documents from the Eleventh Judicial Circuit of Florida in and for [REDACTED], which indicate the following:

- On [REDACTED] 2006, the applicant was arrested and charged with battery. On [REDACTED] 2007, the applicant was arrested under a bench warrant for the battery charge. On March 3, 2009, a *nolle prosequi* was entered by the court for the [REDACTED] 2006 charge.
- On [REDACTED] 2006, the applicant was arrested and charged with possession of drug paraphernalia, possession of cannabis with intent to sell/deliver, and possession of cannabis less than 20 grams. On [REDACTED] 2007 and [REDACTED], 2007, no actions and a dismissal were entered by the courts for the charges.
- On [REDACTED] 2008, the applicant was arrested and charged with two counts of cocaine possession and resisting an officer without violence. On [REDACTED] 2008, a no action was entered by the court for each charge.
- On [REDACTED], 2011, the applicant was arrested and charged with possession of drug paraphernalia and possession of cannabis less than 20 grams. On [REDACTED] 2012, a *nolle prosequi* was entered by the court for each charge.
- On or about [REDACTED] 2012, the applicant was arrested and charged with possession of drug paraphernalia and possession of cannabis less than 20 grams. On [REDACTED] 2012, a *nolle prosequi* was entered by the court for each charge.

The applicant, however, has not complied with the Request for Evidence dated May 16, 2014, which requested the applicant to submit the final court dispositions for all arrests. The record contains the following additional arrests:

1. [REDACTED] 2011 by the [REDACTED] Police Department for violating Florida Statute 316.193, driving under the influence.
2. [REDACTED] 2011 by the [REDACTED] Police Department for violating Florida Statute 322.03(5), driving with a license which has been expired for more than six months.
3. [REDACTED] 2012, by the [REDACTED] Police Department for violating Florida Statute 322.34, knowingly driving while license suspended/revoked.
4. [REDACTED] 2013, by the [REDACTED] Police Department for violating Florida Statute 316.194, driving under the influence.

Florida law provides that:

- A first conviction of driving under the influence is punishable by up to a fine of \$1000 and by imprisonment of not more than six months. A second conviction of

driving under the influence is punishable by up to a fine of \$2000 and by imprisonment of not more than nine months. *See* Florida Statute 316.193(2)(a).

- A first conviction of violating Florida Statute 322.34 is a misdemeanor of the second degree punishable by up to 60 days in jail or by a fine of not more than \$500, or both such fine and imprisonment. *See* Florida Statutes 322.34(2)(A), 775.082(4) and 775.083(1).
- Anyone who violates operating without a license (except paragraph (c)) is guilty of a misdemeanor of the first degree, punishable as provided in Florida Statutes 775.082(4) and 775.083(1). *See* Florida Statute 322.03(3)(b).
- The maximum penalty for a conviction of a misdemeanor of the second degree is imprisonment for a period of not more than 60 days in jail or by a fine of not more than \$500, or both such fine and imprisonment. The maximum penalty for a conviction of a misdemeanor of the first degree is imprisonment for a period of not more than a year or by a fine of not more than \$1000, or both such fine and imprisonment. *See* Florida Statutes 775.082(4) and 775.083(1).

As the above violations are punishable by a term of imprisonment of one year or less, they qualify as “misdemeanors” as defined for immigration purposes in 8 C.F.R. § 244.1.

The applicant remains ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the director’s decision to withdraw TPS and deny the application for re-registration on this ground 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.