



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 3 1 2015**

FILE #: [REDACTED]
APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [REDACTED]
a.k.a. [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. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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, denied the application for re-registration. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further action consistent with this decision

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. The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 7, 2014, and indicated that he was re-registering for TPS or renewal of temporary treatment benefits. On September 4, 2014, the director denied the application for re-registration because the applicant's TPS was withdrawn on August 15, 2013, and as such, the applicant was not eligible to apply for re-registration for TPS.

Filing an application for TPS during a designated re-registration period does not render all individuals eligible for the benefit sought. The re-registration period is limited to individuals who have previously registered for TPS and whose applications have been granted or who did not file during the initial registration period and meet any of the criteria under the late initial registration provisions described in 8 C.F.R. § 244.2(f)(2), as well as all other TPS eligibility criteria. Extension of the Designation of Haiti for TPS, 79 Fed. Reg. 11808 (March 5, 2014).

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).

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).

On August 15, 2013, the director withdrew TPS upon determining that the applicant had been convicted of violating Florida Statute 784.041, domestic battery by strangulation, as a felony in the third degree.

However, the record reflects that the applicant was convicted of a misdemeanor of first degree for violating Florida Statutes 784.03(1).

Florida Statute 784.03 provides:

Battery; felony battery. –

(1)(a) The offense of battery occurs when a person:

1. Actually and intentionally touches or strikes another person against the will of the other; or
2. Intentionally causes bodily harm to another person.

(b) Except as provided in subsection (2), a person who commits battery commits a misdemeanor of the first degree, punishable as provided in statute. 775.082 or statute 775.083.

(2) A person who has one prior conviction for battery, aggravated battery, or felony battery and who commits any second or subsequent battery commits a felony of the third degree.

The evidence of record indicates that on September 5, 2012, the applicant was arrested by the Sheriff's Office for battery – touch or strike, domestic battery by strangulation, and sexual battery. On or about September 6, 2012, the applicant was charged with violating Florida Statute 794.011(4), attempted sexual battery; Florida Statute 784.03(1), domestic battery; Florida Statute 787.02(2), false imprisonment; and Florida Statute 784.03(1A1), battery/touch or strike. On October 2, 2012, in the Court, in and for Florida, no action was taken by the prosecutor for the violation of Florida Statute 784.03(1A1). On June 24, 2013, the applicant was adjudged guilty of violating Florida Statute 784.03(1). The applicant was sentenced to time served, ordered to pay a fine and court cost and attendance of an intervention program. The remaining charges were *nolle proesse*.

Florida Statute 784.03(1)(b) states that a conviction under that section is a misdemeanor of the first degree unless, as provided under section 784.03(2), a person has a prior conviction for battery, aggravated battery, or felony battery. There is no indication that the application has been previously convicted of any other battery offense. It is noted that the applicant's criminal history record also indicates that he, on June 24, 2013, was convicted of a first degree misdemeanor. As the applicant has one misdemeanor conviction, it does not render him ineligible for TPS under the provisions of section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a). Accordingly, the director's decisions withdrawing TPS on August 15, 2013, and deny the current application for re-registration on September 4, 2014, will be withdrawn.

The record, however, reflects that the validity period of the applicant's fingerprint check has expired. Therefore, the matter will be remanded for the purpose of sending the applicant a fingerprint notification form, and affording him the opportunity to comply with its requirements. 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).

ORDER: The director's decisions of August 15, 2013 and September 4, 2014 are withdrawn. The matter is remanded for further action consistent with the above and entry of a new decision.