



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JUN 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](http://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, 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 March 20, 2012, the director denied the application because the applicant had been convicted of a felony and more than two misdemeanors in the United States.

On appeal, the applicant requests that her TPS application be reconsidered as she has a family to support. The applicant indicates on the appeal form that no supplemental brief and/or additional evidence will be submitted.

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).

“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.

“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. 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. 8 C.F.R. § 244.1.

The record reflects the applicant’s criminal record in the state of Florida as follows:

1. On [REDACTED] 2006, the applicant was arrested by the [REDACTED] Sheriff’s Office and charged with petit theft in the second degree – 1<sup>st</sup> offense, a violation of Florida Statute 812.014(3)(a). On [REDACTED], 2007, in the County Court of the Twentieth Judicial Circuit in and for [REDACTED] Florida, the applicant pled nolo contendere to this misdemeanor of the second offense. Adjudication of guilt was withheld and the applicant was placed on probation for four months and ordered to pay a fine and court costs.
2. On [REDACTED] 2011, the applicant was arrested by the [REDACTED] Sheriff’s Office and charged with no driver’s license, a violation of Florida Statute 322.03, and failure to establish and maintain financial responsibility for property damage, a violation of Florida Statute 324.022. On [REDACTED] 2011, in the County Court of the Twentieth Judicial Circuit in and for [REDACTED] Florida, the applicant pled

nolo contendere to and was adjudged guilty of both offenses, misdemeanors of the second degree. For violating Florida Statute 322.03, the applicant was placed on probation for six months, ordered to perform community service and pay court costs. For violating Florida Statute 324.022, the applicant was placed on probation for six months.

3. On [REDACTED] 2011, the applicant was arrested by the [REDACTED] Sheriff's Office for uttering a forged instrument. On [REDACTED] 2011, in the Circuit Court of the Twelve Judicial Circuit in and for [REDACTED] Florida, the applicant was charged with false statement in obtaining driver's license or identification card, a violation of Florida Statute 322.212(5)(a). On [REDACTED] 2012, the applicant pled nolo contendere to this felony of the third degree offense.<sup>1</sup> Adjudication of guilt was withheld and the applicant was placed on probation for 18 months and ordered to complete 50 hours of community service and pay court costs.

On appeal, the applicant asserts that her criminal convictions do not render her ineligible for TPS because the cases against her were dropped and her sentences did not carry any jail or prison time.

Operating a vehicle without a driver's license is a violation of Florida Statute 322.03. Florida Statute 322.39 (b)(2) provides that unless another penalty is provided in this chapter or by the laws of this state, a person convicted of a misdemeanor for the violation of a provision of this chapter is guilty of a misdemeanor of the second degree, punishable as provided in §§ 775.082 or 775.083.

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. Likewise, the maximum penalty for a conviction of a felony of the three degree is imprisonment for a period of not more than 5 years or by a fine of not more than \$5,000, or by both such fine and imprisonment. See Florida statutes 775.082 and 775.083. For immigration purposes, a misdemeanor is any offense that is punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any. Likewise, a felony punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any. The operative word is "punishable," which indicates that a misdemeanor and a felony is defined under the regulation by the maximum imprisonment possible for the crime under Florida law, not the specific prison term meted out by the judge in a particular case.

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

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<sup>1</sup> The director, in her decision, indicated that the applicant was also convicted of the offense of uttering a forged instrument. The charging document of [REDACTED] 2011, however, reflects that no criminal charge was filed for that offense.

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.

Accordingly, a sentence of incarceration is not requisite in finding that an applicant has been convicted within the meaning of the Act. The court dispositions submitted reflect that the applicant pled nolo contendere to each charge, and the judge ordered some form of punishment, penalty or restraint on the applicant's liberty to each charge above. Therefore the applicant has been convicted of each offense within the meaning of section 101(a)(48)(A) of the Act.

The applicant's assertion that the cases were "dropped" is not supported by the record. It is further noted that under the current statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute. *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999). Any subsequent, rehabilitative action that overturns a state conviction, other than on the merits or for a violation of constitutional or statutory rights in the underlying criminal proceedings, is ineffective to expunge a conviction for immigration purposes. *Id.* at 523, 528. In *Matter of Pickering*, the Board of Immigration Appeals reiterated that if a court vacates a conviction for reasons unrelated to a procedural or substantive defect in the underlying criminal proceedings, the alien remains "convicted" for immigration purposes. *Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003).

The applicant contends that her convictions on [REDACTED] 2011 and [REDACTED] 2012 arose on a single occasion because the crime was committed on [REDACTED] 2011, but final judgment was entered on [REDACTED] 2012. However, the record does not support this assertion. The probable cause affidavit of [REDACTED] 2011 from the [REDACTED] Sheriff's Office specifically indicates that the applicant was arrested for violating one offense, uttering a forged instrument. Furthermore, the convictions of [REDACTED] 2007 and [REDACTED] 2011 occurred in different counties and were handled in separate courts. In addition, while the determination of whether the applicant's crimes arose out of a single scheme of criminal misconduct is relevant to her removability under section 237(a)(2)(A) (ii) of the Act, this determination has no bearing on her eligibility for TPS under section 244 of the Act.

Accordingly, the applicant is ineligible for TPS due to her felony and misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The applicant's statements made on appeal have been considered. However, there is no waiver available, even for humanitarian reasons, of the requirements stated above. Consequently, the director's decision to deny the application on 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.

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*NON-PRECEDENT DECISION*

**ORDER:** The appeal is dismissed.