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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

DATE: MAY 07 2015

Office: CALIFORNIA SERVICE CENTER

IN RE: Applicant:

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254a

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The applicant is a native and citizen of Haiti seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254a. On August 5, 2014, the Director denied the applicant's I-821, Application for Temporary Protected Status (Form I-821), because the applicant did not submit requested court documentation relating to his criminal record that was necessary to adjudicate his application.

On appeal, the applicant, through counsel, asserts he has not been convicted of two or more misdemeanor offenses.

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).

"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 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 reflects the applicant was arrested for the following activities:

1. On [REDACTED] 2011, driving with knowledge that his license was suspended in violation of section 322.34 of the Florida statutes.<sup>1</sup>

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<sup>1</sup> F.S.A. § 322.34 provided, in relevant part:

(1) Except as provided in subsection (2), any person whose driver license or driving privilege has been canceled, suspended, or revoked, except a "habitual traffic offender" as defined in s.322.264, who drives a vehicle upon the highways of this state while such license or privilege is canceled, suspended, or revoked is guilty of a moving violation, punishable as provided in chapter 318.

2. On [REDACTED] 2014, solicitation of prostitution services in violation of section 796.07(2)(f) of the Florida statutes.<sup>2</sup>

Based on the applicant's arrest record, on June 14, 2014, the Director sent the applicant a request for certified judgment and conviction documents "from the court(s)" for his arrests. In response, the applicant provided a letter from the [REDACTED] Police Department dated July 7, 2014, which states that a search of the name and date of birth provided by the applicant revealed "local misdemeanor" and "local traffic" arrest records. The one-page letter provided no information concerning the disposition of the applicant's arrests. The Director determined that the applicant had not submitted the necessary evidence to properly adjudicate his TPS application and denied the application accordingly.

On appeal, the applicant asserts his arrest on March 27, 2014 was "nolle prossed" upon his successful completion of the pretrial diversion program recommended by the criminal court and approved by the State of Florida. To support this assertion, the applicant submits a document from the Circuit and County Courts of [REDACTED] Florida, indicating the charge of procuring or soliciting another to commit prostitution in violation of section 796.07(2)(f) of the Florida Statutes was "nolle prosequi" on August 4, 2014. The applicant also submits a letter from the Advocate Program dated July 24, 2014, indicating the applicant was referred to the program on April 22, 2014 by the State Attorney's Office for soliciting another to commit prostitution, and because he has complied with all program requirements, a counselor from the program has recommended that his case be "nolle prossed." The Assistant State Attorney for the Eleventh Judicial Circuit of Florida stamped the letter "approved" on July 31, 2014.

In *Matter of Grullon*, the Board of Immigration Appeals held that a conviction does not exist, for immigration purposes, where the alien never entered a plea to the charges against him, and the

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(2) Any person whose driver license or driving privilege has been canceled, suspended, or revoked as provided by law, except persons defined in s. 322.264, who, knowing of such cancellation, suspension, or revocation, drives any motor vehicle upon the highways of this state while such license or privilege is canceled, suspended, or revoked, upon:

(a) A first conviction is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

<sup>2</sup> F.S.A. § 796.07 provided, in relevant part:

(2) It is unlawful: ...

(f) To solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.

...

(4) A person who violates any provision of this section commits:

(a) A misdemeanor of the second degree for a first violation, punishable as provided in s. 775.082 or s. 775.083.

alien's criminal charges were dismissed without prejudice following his successful completion of a pretrial intervention program prescribed by former section 944.025 of the Florida Statutes.<sup>3</sup> 20 I&N Dec. 12, 14-15 (BIA 1989). The criminal records submitted by the applicant do not indicate that he entered a plea to the charge for soliciting another to commit prostitution, and they do not show that a judge made a finding of guilt against him for soliciting another to commit prostitution. Based on the foregoing, the record sufficiently demonstrates that the

<sup>3</sup> Section 944.025 of the Florida Statutes was renumbered as section 948.08 and amended by Laws 1991, c. 91-280, § 6, eff. Oct. 1, 1991. At the time of the applicant's conviction, section 948.08 of the Florida Statutes stated, in relevant part:

- (1) The department shall supervise pretrial intervention programs for persons charged with a crime, before or after any information has been filed or an indictment has been returned in the circuit court. Such programs shall provide appropriate counseling, education, supervision, and medical and psychological treatment as available and when appropriate for the persons released to such programs.
- (2) Any first offender, or any person previously convicted of not more than one nonviolent misdemeanor, who is charged with any misdemeanor or felony of the third degree is eligible for release to the pretrial intervention program on the approval of the administrator of the program and the consent of the victim, the state attorney, and the judge who presided at the initial appearance hearing of the offender. However, the defendant may not be released to the pretrial intervention program unless, after consultation with his or her attorney, he or she has voluntarily agreed to such program and has knowingly and intelligently waived his or her right to a speedy trial for the period of his or her diversion. The defendant or the defendant's immediate family may not personally contact the victim or the victim's immediate family to acquire the victim's consent under this section.
- (3) The criminal charges against an offender admitted to the program shall be continued without final disposition for a period of 90 days after the date the offender was released to the program, if the offender's participation in the program is satisfactory, and for an additional 90 days upon the request of the program administrator and consent of the state attorney, if the offender's participation in the program is satisfactory.
- (4) Resumption of pending criminal proceedings shall be undertaken at any time if the program administrator or state attorney finds that the offender is not fulfilling his or her obligations under this plan or if the public interest so requires. The court may not appoint the public defender to represent an indigent offender released to the pretrial intervention program unless the offender's release is revoked and the offender is subject to imprisonment if convicted.
- (5) At the end of the intervention period, the administrator shall recommend:
  - (a) That the case revert to normal channels for prosecution in instances in which the offender's participation in the program has been unsatisfactory;
  - (b) That the offender is in need of further supervision; or
  - (c) That dismissal of charges without prejudice shall be entered in instances in which prosecution is not deemed necessary.

The state attorney shall make the final determination as to whether the prosecution shall continue.



applicant does not have a “conviction” within the meaning of section 101(a)(48)(A) of the Act for violating section 796.07 of the Florida Statutes. As the applicant does not have a “conviction” for purposes of immigration law, the applicant has not been convicted of two misdemeanors. Thus, the applicant is eligible for TPS.

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 been met.

**ORDER:** The appeal is sustained.