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**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF K-P-L-

DATE: FEB. 17, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

APPLICATION: FORM I-821, APPLICATION FOR TEMPORARY PROTECTED STATUS

The Applicant, a native and citizen of Haiti, seeks temporary protected status. *See* Immigration and Nationality Act (the Act) § 244, 8 U.S.C. § 1254a. The Director, California Service Center, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

On January 28, 2012, the Director denied the application because the Applicant had been convicted of a felony in the United States.

On appeal, the Applicant asserts that at the time of his guilty plea, he was not fully aware of or advised of the consequences of the immigration consequences of a guilty plea. The Applicant apologizes for his previous criminal actions and requests that this TPS application be reconsidered as he has a family to support. The Applicant resubmits copies of the court dispositions relating to his drug arrest on [REDACTED] 1986, and his aggravated battery arrest on [REDACTED] 1992.

We conduct appellate review on a *de novo* basis. An application or petition which does not comply with the technical requirements of the law may be denied even if the Director does not identify all of the grounds for denial in the initial decision. The entire record was reviewed and considered in rendering this decision on appeal.

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, 8 U.S.C. § 1254a(c)(2)(B) 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

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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, if 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, 8 U.S.C. § 1101(a)(48)(A).

The evidence of record reflects the following:

- On [REDACTED], 1986, the Applicant was arrested by the [REDACTED] Sheriff's Office and charged with Count 1, illicit trafficker in drugs – RICO; Count 2, delivery of cocaine; Count 3, possession of cocaine; and Count 4, trafficking in cocaine – over 28 grams. On [REDACTED] 1987, in the Circuit Court for [REDACTED] Florida, the Applicant pled guilty to Count 4, a violation of Florida Statute 893.135(1)(b)(1), a felony of the first degree. On [REDACTED] 1987, the Applicant was sentenced to term of three and a half years imprisonment and ordered to pay a fine and court costs. The court entered a *nolle prosequi* for each remaining charge.
- On [REDACTED] 1987, the Applicant was arrested by the [REDACTED] Sheriff's Office for delivery of cocaine. On [REDACTED] 1987, in the Circuit Court for [REDACTED] Florida, the charge was dismissed.
- On [REDACTED] 1992, the Applicant was arrested by the [REDACTED] Police Department and charged with aggravated battery upon a pregnant woman. Court documentation from Circuit and County Courts for [REDACTED] Florida indicates that on [REDACTED] 1992, the charge was dismissed.

In a request for evidence dated March 11, 2011, the Applicant was requested to provide certified judgment and conviction documents from the courts for all arrests. The Applicant, however, has not submitted the court dispositions relating to all arrests as the final dispositions are unknown for the following:

- An arrest on [REDACTED] 1984, by the [REDACTED] Police Department for operating a motor vehicle while license is suspended, revoked, canceled, or disqualified.
- An arrest on [REDACTED] 1984, by the [REDACTED] Police Department for a charge of contempt of court related to a violation of driver's license restrictions.
- On [REDACTED] 1986, the Applicant, under an alias, was charged with violating a municipal ordinance of marijuana possession.
- On [REDACTED] 1986, the Applicant, under an alias, was charged with violating a municipal ordinance of marijuana possession.
- An arrest on [REDACTED] 1987, by the [REDACTED] Sheriff's Office for a charge of contempt of court for a violation of refusing/failing to produce driver's license.

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- On [REDACTED] 1998, the Applicant, under an alias, was charged with violating a municipal ordinance of marijuana possession.

Florida statute 893.135(1)(b)(1) provides that any person who knowingly sells, purchases, manufactures, delivers, or brings into the state, or who is knowingly in actual or constructive possession of 28 grams or more of cocaine commits a felony of the first degree, which is punishable as provided in Florida statute 775.082. Florida Statute 775.082(3)(b) provides, in pertinent part, that a person who has been convicted of a felony of the first degree may be punished by a term of imprisonment not exceeding 30 years.

As a conviction under Florida statute 893.135(1)(b)(1) is punishable by a term of imprisonment of more than one year, it qualifies as a felony under 8 C.F.R. § 244.1. We note that the Applicant was sentenced to a term of more than one year for violating Florida Statute 893.135(1)(b)(1).

The Applicant remains ineligible for TPS due to his felony conviction on [REDACTED] 1987. 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. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above. Accordingly, the Director's decision to deny the application on this ground will be affirmed.

The Applicant is also ineligible for TPS because he did not provide the requested court dispositions for the offenses committed on [REDACTED] 1984, [REDACTED] 1984, [REDACTED], 1986, and [REDACTED] 1986, as requested for the adjudication of his application. 8 C.F.R. § 244.9(a).

Furthermore, an applicant who is a national of a foreign state is eligible for TPS only if such applicant establishes that he or she is admissible as an immigrant. Section 244(c)(1)(A)(iii) of the Act, 8 C.F.R. § 244.2(d).

Section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), states, in pertinent part:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
 - (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

Because the Applicant has been convicted of the above drug offense, we also find the Applicant to be inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act. There is no waiver available for inadmissibility under 212(a)(2)(A)(i)(II) of the Act except for a single offense of simple possession of thirty (30) grams or less of marijuana. Section 244 (c)(2)(A)(iii)(II) of the Act, 8 U.S.C. § 1254a(c)(2)(A)(iii)(II).

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The appeal is dismissed for the above stated reasons. 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.

Cite as *Matter of K-P-L-*, ID# 15143 (AAO Feb. 17, 2016)