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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

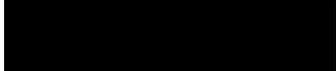


**U.S. Citizenship
and Immigration
Services**



M2

DATE: **SEP 29 2011** Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE: Applicant: 

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

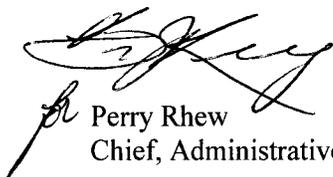
ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the California Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the California Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be 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. § 1254.

The director denied the application because he found that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant submits documents from the courts and the Broward County (Florida) Sheriff's Office.

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 Federal Bureau of Investigation (FBI) report reflects the following offenses in the state of Florida:

1. On July 9, 1996, the applicant was arrested under the alias [REDACTED] by the Miami Police Department for robbery, carrying a concealed weapon and use of a firearm in the commission of a felony.
2. On October 12, 2002, the applicant was arrested under the alias [REDACTED] by the Broward County Sheriff's Office for two counts of failure to appear.
3. On December 20, 2002, the applicant was arrested by the Creek Police Department for driving under the influence, five counts of driving under the influence causing serious bodily injury, and five counts of driving under the influence causing property damage.

The record contains documentation dated August 23, 2001, from the Sheriff's Office of Broward County, which reflects the following offenses under the name [REDACTED]

4. On October 15, 2000, the applicant was issued a citation (01309AML) for violation license restrictions. Case no. 00113316TC20A.
5. On June 10, 2001, the applicant was issued a citation (01560AUM) for property damage (\$1400) and driving while license is suspended. Case no. 01059964TC20A.

On May 27, 2010, a notice was issued requesting the applicant to submit certified judgment and conviction documents for all arrests. The applicant, in response, submitted a letter dated June 22, 2010, from the Broward County Sheriff's Office indicating that a search under the name [REDACTED] revealed no record.

On July 12, 2010, a notice was issued requesting the applicant to submit certified judgment and conviction documents for all arrests. The applicant, in response, submitted a letter dated October 7, 2010, from the Deputy Clerk of the United States District Court, Southern District of Florida, which indicated that a search of its public records under the name [REDACTED] revealed no case records.

On November 12, 2010, the director issued a Notice of Intent to Deny, which advised the applicant that it appeared that his arrest on July 9, 1996 had resulted in a conviction on August 16, 1996, for carrying a concealed weapon, and that he had also been arrested on October 12, 2002, for two counts of failure to appear. The director advised the applicant that because the previously submitted court documents no longer showed the disposition, he was to submit a written statement explaining the results of this interaction with law enforcement authorities and to provide certified judgment and convictions documents from the courts for all of his arrests. The applicant was given 30 days to submit the requested documents; however, he failed to do so in the allotted time period. Accordingly, on January 6, 2011, the director denied the application.

On appeal, the applicant submitted a certified court document from Eleventh Judicial Circuit Court of Miami-Dade County, Florida, which indicates that a search of its files and records did not find any felony or misdemeanor record(s) under the name [REDACTED]. The applicant also submitted letters from the Broward County Sheriff's Office, U.S. District Court for Southern District of Florida, and the Seventeenth Judicial Circuit Court for Broward County, Florida, indicating that no arrest and/or case was found under the name [REDACTED] with a date of birth of January 18, 1956.

On July 27, 2011, the AAO issued a notice to the applicant advising him that it was the AAO's intent to dismiss the appeal based upon his failure to submit the requested court documents. The applicant was advised that he had not met the burden of proof as the FBI report, which was based on fingerprint comparisons, reflected that each arrest occurred under the alias [REDACTED] with a date of birth of [REDACTED]. The applicant was advised that because the arrests occurred under an alias, the documents in the name of [REDACTED] provided by the Broward County Sheriff's Office, U.S. District Court for Southern District of Florida, and the Eleventh and Seventeenth Judicial Circuit Courts for Broward County, Florida had no probative value or evidentiary weight. The applicant was also advised that the record contained the arrest report, charging and judgment documents in Case no. F96-21563 for the 1996 arrest under the name, [REDACTED].

The court documentation in Case no. F96-21563 indicates that the applicant pled guilty to violating Florida Statute 790.01(2), carrying a concealed firearm, a felony of the third degree. The applicant was sentenced to credit for time served (38 days).

The applicant, in response, only provided court documentation in Case no. F96021563, which reflects that on August 16, 1996, he was convicted under the alias [REDACTED] of carrying a concealed weapon and that adjudication of guilt was withheld. The remaining offenses were dismissed.

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. Therefore, the applicant has been "convicted" of the felony offense for immigration purposes.

The applicant has failed to provide the requested evidence for the final court dispositions of every charge against him. As the courts routinely destroy old records as a matter of administrative procedure; this act does not affect an underlying charge or conviction. The applicant has the burden to establish, with affirmative evidence, that outstanding charges were dismissed or were in error. The applicant is 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 deny the application for this reason will be affirmed.

The applicant is also ineligible for TPS due to his felony conviction. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). There is no waiver available, even for humanitarian reasons, of the requirements stated above.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for TPS has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

While not the basis for the dismissal of the appeal, it is noted that the record reflects that an exclusion hearing was held on September 1, 1995, and the applicant was ordered excluded and removed from the United States. The applicant appealed the decision of the immigration judge (IJ) to the Board of Immigration Appeals (BIA). On February 26, 1996, the BIA dismissed the appeal.

ORDER: The appeal is dismissed.