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APR 13 2007

FILE: [REDACTED]
[EAC 99 206 50711]
[WAC 05 085 82022]

OFFICE: California Service Center

DATE:

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wieman
Robert P. Wieman, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center (CSC), withdrew the applicant's previously granted Temporary Protected Status and denied the application for re-registration. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a citizen of Honduras 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 withdrew the applicant's previously approved TPS and denied his re-registration application because he found that the applicant had been convicted of two or more misdemeanors, making him ineligible for TPS under section 244(c)(2)(B) of the Act.

On appeal, the applicant acknowledges that he has three convictions, but states that one of them was reduced, that his driver's license was returned to him, and that he completed a New York State drinking driver program. Documentation was provided in support of these statements.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or

- (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

An alien shall not be eligible for temporary protected status 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).

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

Felony means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: 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 such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

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 shows that the applicant, who was initially granted TPS on May 16, 2000, filed the current application for re-registration or renewal of TPS on December 24, 2004. On March 30, 2006, the director, CSC, issued a Notice of Intent to Withdraw (NOIW) the applicant's TPS based on court dispositions indicating that the applicant had three convictions under New York State's Vehicle and Traffic Law (VTL) and Penal Law (PL) codes. The convictions included the following guilty pleas:

- (1) October 19, 1994, to VTL section 1172 (Failure to Stop at Stop Sign) and VTL section 509.1 (Operation of Motor Vehicle by Unlicensed Driver);
- (2) November 17, 1997, to PL section 240.20 (Disorderly Conduct); and
- (3) April 13, 2005, to VTL section 1192.1 (Driving While Ability Impaired).

The director noted that each of the foregoing violations is punishable under New York State law by a fine or imprisonment up to 15 days, which makes them misdemeanors for immigration purposes.

The applicant responded to the NOIW, but did not submit any evidence to refute the foregoing information. On May 25, 2006, therefore, the director issued a decision finding that the applicant was ineligible for TPS under section 244(c)(2)(B) of the Act because of two or more misdemeanor convictions in the United States. The director denied the applicant's re-registration application and withdrew the applicant's previously granted TPS, in accordance with 8 C.F.R. § 244.14(a)(1).

On appeal, the applicant acknowledges his three convictions in New York, but points out that one was on a reduced charge and notes that his driver's license has been returned and that he successfully completed state-sponsored drinking driver program. None of these points alters the fact that the applicant has three convictions in New York State. The applicant has suggested that since all of the convictions are termed "violations" under New York State law, they are not misdemeanors and do not disqualify the applicant for TPS under 8 C.F.R. § 244.1. A review of New York State law, however, confirms the director's finding that each of the convictions is punishable by up to 15 days in jail, whether or not such a sentence was imposed on the applicant, which makes each of them a misdemeanor for immigration purposes under 8 C.F.R. § 244.1.

Federal immigration laws should be applied uniformly, without regard to the nuances of state law. See *Ye v. INS*, 214 F.3d 1128, 1132 (9th Cir. 2000); *Burr v. INS*, 350 F.2d 87, 90 (9th Cir. 1965). Thus, whether a particular offense under state law constitutes a "misdemeanor" for immigration purposes is strictly a matter of federal law. See *Franklin v. INS*, 72 F.3d 571 (8th Cir. 1995); *Cabral v. INS*, 15 F.3d 193, 196 n.5 (1st Cir. 1994). While we must look to relevant state law in order to determine whether the statutory elements of a specific offense satisfy the regulatory definition of "misdemeanor," the legal nomenclature employed by a particular state to classify an offense or the consequences a state chooses to place on an offense in its own courts under its own laws does not control the consequences given to the offense in a federal immigration proceeding. See *Yazdchi v. INS*, 878 F.2d 166, 167 (5th Cir. 1989); *Babouris v. Esperdy*, 269 F.2d 621, 623 (2d Cir. 1959); *United States v. Flores-Rodriguez*, 237 F.2d 405, 409 (2d Cir. 1956).

The fact that New York's legal taxonomy classifies the applicant's offenses as "violations" rather than "misdemeanors" is simply not relevant to the question of whether the offenses qualify as a "misdemeanors" for immigration purposes. As cited above in 8 C.F.R. § 244.1, 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. The regulations also provide that offenses "punishable by imprisonment for a maximum term of *five days or less* shall not be considered a misdemeanor." (Emphasis added.) In this case, New York law provides that violations of VTL 509.1 and 1192.1, as well as PL 240.20, are each punishable by up to fifteen days incarceration. Each of the applicant's convictions, therefore, is a "misdemeanor" as defined for immigration purposes in 8 C.F.R. § 244.1.

The applicant is ineligible for TPS, under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a), due to his record of three misdemeanor convictions, detailed above. Accordingly, the director's decision to deny the re-registration application and withdraw the applicant's TPS for this reason will be affirmed.

An alien applying for temporary protected status 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.

ORDER: The appeal is dismissed.