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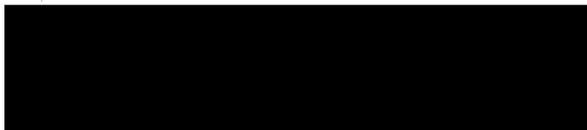
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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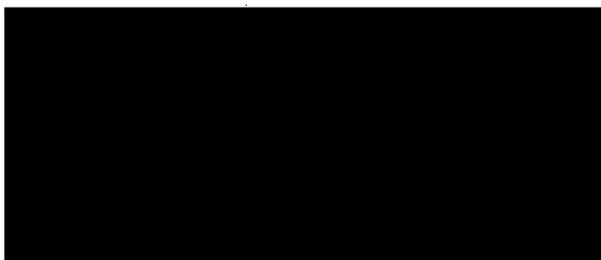
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OFFICE: VERMONT SERVICE CENTER

DATE: FEB 08 2007

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:

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.

Cindy M. Gomez
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The TPS application was initially approved. The approval was subsequently withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, the individual named is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

The applicant's TPS application was initially approved by the Vermont Service Center on April 25, 2003.

Based upon the results of a Federal Bureau of Investigations (FBI) fingerprints results report, the director requested the applicant to submit the final court dispositions stemming from his two arrests in January and March of 2004. The applicant failed to respond to the director's request for the final court dispositions.

The director determined that the applicant had been convicted of two or more misdemeanors, and subsequently withdrew the approval of the TPS application on May 31, 2006.

On appeal, the applicant asserts his eligibility for TPS.

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.

The record reveals the following offenses:

- On January 6, 2004, the applicant was arrested by the Suffolk County Police Department in New York and charged with forgery, and on February 9, 2004, he was convicted of attempted forgery, misdemeanor (PL 110-170.05).
- On March 21, 2004, the applicant was arrested by the Suffolk County Police Department in New York and charged with operating a motor vehicle under the influence of drugs or alcohol, operating a motor vehicle without insurance, vehicle registration violation, and changing lanes when hazardous; and on June 2, 2004, he was convicted of operating a motor vehicle under the influence of drugs or alcohol (VTL 1192.3).

On appeal, the applicant asserts that he has been convicted of one misdemeanor and one traffic infraction/violation and thus, is eligible for TPS. The applicant submits copies of his final court dispositions.

Contrary to the applicant's assertion, federal immigration law should be applied uniformly, without regard to the nuances of state law. *See Ye v. INS*, 214 F.3d 1128, 1132 (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 (2nd Cir. 1959); *United States v. Flores-Rodriguez*, 237 F.2d 405, 409 (2nd Cir. 1956).

The fact that New York's legal taxonomy classifies the applicant's offenses as "violations" or "infractions" rather than "crimes," and precludes the offense from giving rise to any criminal disabilities in New York, is simply not relevant to the question of whether the offenses qualify as "misdemeanors" for immigration purposes.

As cited above, 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. It is also noted that offenses that are punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. In this case, a conviction for the offense of operating a motor vehicle under the influence of drugs or alcohol carries a penalty of \$500.00 and/or a maximum of one year in prison (VTL 1192.3). Therefore, it is concluded that the applicant has been convicted of two or more "misdemeanors," as defined for immigration purposes in 8 C.F.R. § 244.1.

The applicant is ineligible for TPS due to his record of two or more misdemeanor convictions, as detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw the approved TPS application 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. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.