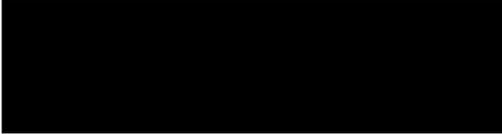


Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **MAY 07 2007**

[WAC 05 214 73011]

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:



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. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, California Service Center, and is now before the Administrative Appeals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 is a 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.

The record reveals that the applicant filed a TPS application during the initial registration period on April 16, 2001, under Citizenship and Immigration Services (CIS) receipt number SRC 01 185 64390. The Director, Texas Service Center, approved that application on August 24, 2002.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 2, 2005, and indicated that he was re-registering for TPS.

The record reveals the following offenses:

- (1) On April 25, 2005, the applicant was arrested by the Miami Police Department for (1) "No Valid drivers License", (2) "Reckless Driving", (3) "Fleeing/Eluding Police Officer, and, (4) "Resisting Officer Without Violence to his Pers." On June 16, 2006, the dispositions of charges in (3) and (4) above were "Nolle Prossed". The applicant did not submit the final disposition on the remaining charges.
- (2) On July 15, 2005, the applicant was arrested by the Miami Metro-Dade Police Department for (1) "Failure to Appear."

The director withdrew temporary protected status because the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel for the applicant states that the applicant had only been charged with a misdemeanor and these charges were nolle prossed. According to the applicant, the remaining charges were traffic violations and not misdemeanors. Counsel correctly states that two of the charges were nolle prossed. However counsel incorrectly defines the remaining two charges as simple traffic violations.

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). 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, Florida provides that a violation of (2) above is punishable by up to 90 days incarceration. Therefore, we conclude that the charge qualifies as a "misdemeanor" as defined for immigration purposes in 8 C.F.R. § 244.1. The applicant has failed to provide the final disposition of this charge as requested by the director. Furthermore, the applicant has failed to provide the final court disposition for the July 5, 2005 arrest as well. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, it is noted that the applicant has provided insufficient evidence to establish his qualifying continuous residence since February 13, 2001 and continuous physical presence from March 9, 2001 to the filing date of the TPS application. Therefore, the application must be denied for these reasons as well.

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 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 will be dismissed.