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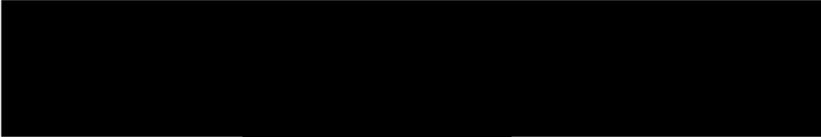
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: FEB 12 2008
[EAC 01 165 53770]

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: 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant appears to be represented as the record contains Notices of Entry of Appearance as Attorney or Representative, Form G-28. The initial Forms G-28 authorized [REDACTED] and [REDACTED] of Immigration Community Services to act on behalf of the applicant. However, neither individual nor Immigration Community Services are recognized as authorized or accredited representatives pursuant to 8 C.F.R. § 292.1(a).¹ The second Form G-28 was not signed by the individual who indicated he was representing the applicant and said form failed to list whether the individual was an attorney or representative, the name of the agency the individual was associated with, and a telephone number. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

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.

The director withdrew the applicant's TPS because he had been convicted of two misdemeanors in the United States.

On appeal, the applicant asserts that his conviction of February 7, 2004 is a violation and is not considered a misdemeanor.

The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. Section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1).

An alien shall not be eligible for temporary protected status 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 and 8 C.F.R. § 244.4(a).

"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.

In response to a Notice of Intent to Deny issued on April 9, 2007, the applicant submitted the requested court dispositions, which revealed the following misdemeanor offenses in New York:

1. On February 7, 2004, the applicant was arrested by the Suffolk County Police Department for operating a motor vehicle with more than .08 percent or more alcohol, a violation of Vehicle Traffic Law (VTL) 1192.2, and driving while intoxicated, a violation of VTL 1192.3, both Class U misdemeanors. On April 1, 2004, the applicant was convicted of violating VTL 1192.1, operating a vehicle while ability impaired by alcohol. The applicant was ordered to pay a fine and his license was suspended for 90 days. Docket no. [REDACTED]

¹ See <http://www.usdoj.gov/eoir/statspub/raroster.htm> for the list of accredited organizations and representatives.

2. On July 30, 2005, the applicant was arrested by the Suffolk County Police Department for operating a motor vehicle with more than .08 percent or more alcohol, a violation of VTL 1192.2, and driving while intoxicated, a violation of VTL 1192.3, both Class U misdemeanors. On October 3, 2005, the applicant pled guilty to violating VTL 1192.2. The applicant was ordered to pay a fine, his license was revoked for six months and he was placed on probation for three years. Docket no. [REDACTED]

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 offense as a "violation" rather than a "crime," and precludes the offense from giving rise to any criminal disabilities in New York, is simply not relevant to the question of whether the offense qualifies as a "misdemeanor" 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, New York law provides that a violation of driving while ability impaired "shall be punishable by a fine of not less than three hundred dollars nor more than five hundred dollars or by **imprisonment in a penitentiary or county jail for not more than fifteen days**, or by both such fine and imprisonment." (Emphasis added). Therefore, we conclude that the applicant's conviction in number one above qualifies as a "misdemeanor" as defined for immigration purposes in 8 C.F.R. § 244.1.

The applicant is, therefore, ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a), based on his two misdemeanor convictions committed in the United States. Therefore, in accordance with 8 C.F.R. § 244.14, the director's decision to withdraw the applicant's TPS is affirmed.

It is noted for the record that a removal hearing was held on October 5, 1995, and the applicant was ordered removed *in absentia* by an immigration judge.

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 from the withdrawal of the TPS application is dismissed.