

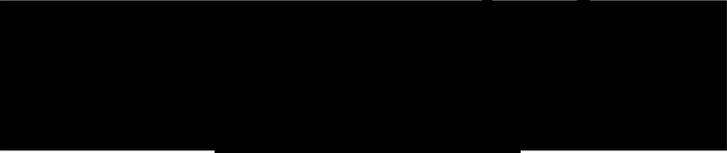


U.S. Citizenship
and Immigration
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: MAY 01 2008

[EAC 08 089 51571, *appeafj*

[EAC 07 350 72595]

INRE:

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 Vermont Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied 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.

The applicant filed an initial Form I-821, Application for Temporary Protected Status, under receipt number LIN 02 200 51643 during the initial **registration** period. The Director, Nebraska Service Center (NSC), denied that application on October 31, 2002, after determining that the applicant had abandoned his application by failing to respond to a request to appear for fingerprinting. Since the application was denied due to abandonment, there was no appeal available; however, the applicant filed a motion to reopen that was denied by the NSC Director on February 21, 2003. After review of the record, the **Chief**, AAO, affirms the director's denial decisions.

The applicant filed the current Form I-821 on September 12, 2007, under receipt number EAC 07 350 72595, and indicated that he was re-registering for TPS.

The director denied the application because the applicant failed to establish he was eligible for late initial **registration**. The director also found that the applicant had not established that he had continuously resided in the United States since February 13, 2001 or that he had been continuously physically present in this country since March 9, 2001, and that he had been convicted of two misdemeanors committed in the United States.

On appeal, counsel submits a receipt notice dated March 29, 2007 showing the applicant filed a Form I-589, Request for Asylum and for Withholding of Deportation, on that date. Counsel argues that because the applicant filed his first Form I-821 during the initial registration period and currently has a Form I-589 pending before the Immigration Court, he is eligible for late initial registration. Counsel states the director should have acknowledged the receipt of the applicant's documents concerning continuous residence and continuous physical presence and not merely stated that his client is ineligible due to lack of evidence.

Counsel argues that for the purpose of TPS, the applicant cannot be inadmissible for being convicted of two or more misdemeanors because the 2004 "Leaving the Scene" ticket his client received is "a class 1 in the State of Colorado." Counsel explains that the penalties for this offense could include a minimum sentence of 10 days and a maximum sentence of 1 year. Counsel concludes that as no prison sentence was imposed, this offense may not be a misdemeanor as defined by the INA.

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS if the 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 that 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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R § 244.4(a).

The phrase *continuously physically present*, as defined in 8 C.F.R § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The phrase *continuously resided*, as defined in 8 C.F.R § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The initial

registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed his application with Citizenship and Immigration Services on September 12, 2007.

If an alien is filing a re-registration application, a previous grant of TPS must have been afforded the applicant, as only those individuals who are **granted** TPS must register annually. The applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS.

To qualify for late registration, an applicant must provide evidence that during the initial registration period, he or she fell within at least one of the provisions described in 8 C.F.R. § 244.2(t)(2) above.

On appeal, counsel argues the applicant is eligible for late initial registration because he filed his Form 1-589 on March 29, 2007, and that this request for asylum is pending before the Immigration Court. To confer eligibility for late initial registration to the applicant, the Form 1-589 would have had to have been pending during the initial registration period.

On appeal, the applicant submits evidence in an attempt to establish his continuous residence and continuous physical presence in the United States. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in the regulations at 8 C.F.R. § 244.2(t)(2). Consequently, the director's decision to deny the application for TPS is affirmed.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002.

A list of the evidence submitted by the applicant to show that he satisfying continuous residence and continuous requirements is shown below:

1. A copy of a rent receipt from the applicant for an unspecified property dated March 2, 2001, for the period from March 1, 2001 to March 31, 2001.
2. A copy of a Ria money order showing the applicant sent funds to a person in El Salvador on April 15, 2002.
3. A copy of an affidavit dated April 27, 2002, from [REDACTED] indicating that the applicant had lived in Colorado since January 2000.
4. A copy of an affidavit dated May 1, 2002, from [REDACTED] indicating that he has known the applicant since January 2001.
5. A copy of a receipt from the Aurora, Colorado, Field Office Manager for the Social Security Administration acknowledging that the applicant applied for a Social Security card on August 13, 2002.

6. A copy of the applicant's bill from Cricket Computer Wireless in Denver, Colorado for the billing period August 22, 2002 to September 21, 2002, along with four other undated billing documents from the same firm.
7. A copy of an affidavit dated September 7, 2002, from _____ indicating the applicant lived with him from March 2000 to November 2000 at an address in Denver, Colorado.
8. Copies of the applicant's receipts for legal fees dated March 24, 2006 and April 23, 2007.
9. A copy of the applicant's Colorado identification card issued on January 29, 2007.

It is determined that evidence for the year 2001 is lacking. Therefore, the applicant has not provided convincing evidence to establish his continuous residence and continuous physical presence during the required time periods. 8 C.F.R § 244.2 (b) and (c). Consequently, the director's decision to deny the application for TPS is affirmed for these additional reasons.

The regulations at 8 C.F.R § 244.1(3) define "felony" and "misdemeanor" as:

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 reflects the following offenses:

- (1) On December 15, 2004, the applicant was convicted of leaving the scene of an accident involving injury, Colorado Revised Statutes (C.R.S), 42-4-1601 (1), (2)(a), a misdemeanor, by a Judge of the County Court of Adams County of the State of Colorado. (Case # _____)

- (2) On September 8, 2005, the applicant was convicted of driving under the influence with a blood alcohol content of over .20, C.R.S. 42-4-1301 (I)(a), (7), a misdemeanor, by a Judge of the County Court of the State of Colorado. (Case #: [REDACTED])

On appeal, counsel argues that for the purpose of TPS, the applicant cannot be inadmissible for being convicted of two or more misdemeanors because the 2004 "Leaving the Scene" ticket his client received is "a class 1 traffic offense in the **State** of Colorado." Counsel correctly indicates that the penalties for this offense could include a minimum sentence of 10 days and a maximum sentence of 1 year. Counsel concludes that as no prison sentence was imposed, this offense may not be a misdemeanor as defined by the INA.

Counsel's assertion is not persuasive. 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 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).

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, and 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, Colorado law provides that violation of C.R.S. 42-4-1601 (I), (2)(a), is punishable by up to one year of imprisonment. Therefore, it is concluded that the applicant's convictions of both #1 and #2 listed above qualify as "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 misdemeanor convictions, detailed above. Section 244(c)(1)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason is again affirmed.

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 is dismissed.