U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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. FILE: [redacted] Office: VERMONT SERVICE CENTER Date: FEB 01 2008

[EAC 07 23652016, *appeal]*
[EAC 99 214 50310]

INRE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director; Vermont Service Center, and is now before the Administrative Appeals Office on appeal.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

The applicant is a native and citizen of Honduras who was granted TPS on January 29, 2004. The director subsequently withdrew the applicant's status on July 23, 2007, when it was determined that the applicant had been convicted the criminal possession of a controlled substance and disorderly conduct..

On appeal, counsel states:

> The decision erroneously states that Mr. is inadmissible to the U.S. due to his drug conviction under section 212(a)(2)(A)(i)(II). That section of the INA specifically exempts misdemeanor convictions wherein the sentence is less than one year and the alien has not served more than six months imprisonment. In Mr. case, he was convicted of a misdemeanor, which by New York Penal Code is less than one year sentence, and he was sentenced to time served in jail, which was less than six months. Since Mr. falls within the exception to inadmissibility, he is not barred from being eligible for TPS. The disorderly conduct charge is a violation, the arrests resulted in one misdemeanor and one violation which does not make him ineligible. Therefore, Mr. is neither barred by a non-waivable ground of inadmissibility nor by the two misdemeanor/one felony bar.

Citizenship and Immigration Services may withdraw TPS if the alien was not eligible at the time the status was granted, or if he or she becomes ineligible for TPS. 8 C.F.R. § 244.14(a)(1).

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 designated by the Attorney General 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 smce 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.

(g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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 regulations at 8 C.F.R. § 244.1, 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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreigri country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

The record reflects that on September 17, 1998, the applicant was arrested and charged with the criminal sale of a controlled substance (dangerous drug) under PL 220.39, criminal possession of a controlled substance (dangerous drug) under PL 220.16 and criminal possession of a controlled substance (dangerous drug) under PL 220.03. The first charge of the criminal sale of a controlled substance under PL 220.39 was dismissed. The second charge of criminal possession of a controlled substance under PL 220.16 was reduced to a charge under PL 220.03, a misdemeanor, and the third charge of criminal possession of a controlled substance under PL 220.03 was reduced to a charge of disorderly conduct under PL 240.20. The applicant pled guilty and was convicted of the second and third charges by a Judge of the District Court of Nassau County - Hempstead in the State of New York. (Docket Number [redacted]

On appeal, counsel states that the director's decision erroneously states that Mr. _ is inadmissible to the U.S. due to his drug conviction under section 212(a)(2)(A)(i)(II). Counsel argues that section of the INA specifically exempts misdemeanor convictions wherein the sentence is less than one year and the alien has not served more than six months imprisonment. The exception clause referred to by counsel applies an exception for a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime and not for a violation of crimes relating to a controlled substance. Therefore, the applicant is ineligible for TPS because he is inadmissible to the United States, pursuant to under section 212(a)(2)(A)(i)(II) of the Act, based on his drug-related conviction. Section 244(c)(1)(A)(iii) of the Act. There is no waiver available to an alien found inadmissible under this section. *See* 8 C.F.R. § 244.3(c)(1). Accordingly, the director's decision to withdraw TPS is affirmed.

On appeal, counsel also asserts the applicant's disorderly conduct charge is a violation and that his arrests resulting in convictions for one misdemeanor and one violation do not make him does not make an ineligible for having committed two misdemeanors.

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 (lst 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 defmition 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" or "traffic infractions" rather than "crimes," and precludes the offenses 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, 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; New York law provides that violation of PL240.20 is punishable by up to 15 days of incarceration. Therefore, it is concluded that the applicant's convictions of both crimes 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)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw TPS is affirmed for this additional reason.

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.