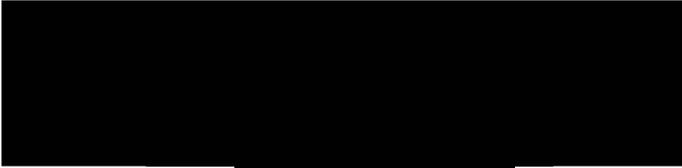


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FILE: [REDACTED]
[SRC 99 185 50073]

OFFICE: VERMONT SERVICE CENTER DATE:

JAN 22 2008

INRE: Applicant:



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

for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: Approval of the application was withdrawn by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of Honduras who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 V.S.c. § 1254.

The director withdrew approval of the applicant's TPS because he found that the applicant had failed to respond to a request for evidence regarding his criminal record.

On appeal, the applicant submits a brief statement and additional documentation.

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. 8 C.P.R. § 244.14(a)(1).

Section 244(c) of the Act, and the related regulations in 8 c.P.R. § 244.2, provide that an applicant who is a national of a foreign state 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 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.P.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.

An alien shall not be eligible for TPS 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 applicant filed his initial Form I-821, Application for Temporary Protected Status, at the Texas Service Center (TSC), on May 1, 1999. The application was approved on March 31, 2000.

As a result of being fingerprinted in connection with an application for extension of his TPS benefits filed by the applicant with the California Service Center (CSC) on January 5, 2005, Citizenship and Immigration Services (CIS) received a report from the Federal Bureau of Investigation (FBI) indicating that the applicant had been arrested by the New York Police Department (NYPD) on August 6, 2004, charged with disorderly conduct, and convicted upon a plea of guilty. In response to a request for evidence on March 23, 2005, the applicant submitted a certified court disposition of this arrest from the Criminal Court of the City of New York, New York County, dated May 2, 2005, confirming that the applicant pled guilty on August 6, 2004, to a violation of New York Penal Law (NYPL) section 240.20 – disorderly conduct - for which he was sentenced to one day of community service and received a one-year conditional discharge.

CIS subsequently received another FBI report indicating that the applicant had been arrested twice more by the NYPD in 2006 and charged with the following offenses:

1. on February 27, 2006, Assault With Intent to Cause Physical Injury, a Class A misdemeanor;
2. on March 14, 2006:
 - a. Aggravated Harassment 2nd : telephone, a Class A misdemeanor, and
 - b. Stalking 4th : Cause Fear, a Class B misdemeanor.

On December 18, 2006, the VSC Director requested the applicant to submit the final court dispositions of his arrests in 2006. The director noted the applicant's prior conviction for disorderly conduct in August 2004.

The applicant did not provide the final court dispositions of his arrests in 2006 or respond in any manner to the director's request. On May 8, 2007, therefore, the director withdrew approval of the applicant's TPS.

On appeal, the applicant submits the final court dispositions of his arrests in 2006. According to the certified court records of the Criminal Court of the City of New York, New York County, dated June 4, 2007:

1. On June 30, 2006, charges stemming from the applicant's arrest on February 27, 2006, were dismissed.
2. On September 26, 2006, the applicant pled guilty to a violation of NYPL section 240.26 – harassment in the 2nd degree - for which he received a conditional discharge of one year and a one-year order of protection.

Thus, the applicant has been convicted of two offenses – disorderly conduct on August 6, 2004, and harassment in the 2nd degree on September 26, 2006 – both of which are classified as "violations" under New York State law. NYPL section 10.00 defines "violation" as an offense that is punishable by imprisonment of up to 15 days. For immigration purposes, therefore, conviction of a "violation" in New York State falls within the definition of a misdemeanor in 8 C.F.R. § 244.1 because it could be punished by imprisonment of more than five days. †

† 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).

Accordingly, the applicant is ineligible for TPS under section 244(c)(2)(B)(i) of the Act, and 8 c.P.R. § 244.4(a), because he has been convicted of two misdemeanor offenses committed in the United States. Consequently, the director's decision to withdraw the approval of the applicant's TPS 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.

ORDER: The appeal is dismissed.