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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER

Date:

OCT 01 2010

IN RE: Applicant: [Redacted] S

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

ON BEHALF OF APPLICANT:

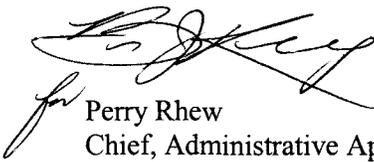
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office 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 director denied TPS because the applicant had been convicted of two or more misdemeanors committed in the United States. The director also denied the application because the applicant had not submitted an identity document bearing his photograph and/or fingerprint.

On appeal, counsel for the applicant states that the applicant was convicted of only one misdemeanor and the applicant is entitled to have his TPS granted.

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 "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. 8 C.F.R. § 244.1.

The record reveals the following offenses:

- (1) On May 11, 1999, the applicant was arrested by the Sheriff's Office Upper Marlboro, Maryland for "2nd Degree Assault." (Case # [REDACTED]).
- (2) On March 11, 2002, the applicant was arrested by the Hyattsville, Maryland Police Department for three charges of "Assault- 2nd Degree." (Case # [REDACTED]).
- (3) On March 11, 2002, the applicant was arrested by the Crim Record Exchange Agency, Richmond, Virginia for two counts of "Abuse and Neglect of Children" and "Reckless Driving." (Case # [REDACTED]).

- (4) On March 11, 2002, the applicant was arrested by the Alexandria, Virginia Police Department for "Possession of Burglary Tools." (Case # [REDACTED]).

Pursuant to a notice dated July 27, 2009, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant was also requested to provide evidence of his continuous residence since February 13, 2001 and continuous physical presence from March 9, 2001 to the filing date of his TPS application. The director found that the applicant's response received on August 31, 2009, did not include any new evidence to establish residence in the United States since February 13, 2001, however, the director determined that the applicant's arrest record together with other evidence provided by the applicant, establish that he had continuously resided and been physically present in the United States for the qualifying periods.

In response to the July 27, 2009 notice, the applicant also submitted a certified court document from the Hanover County, Virginia Traffic Court which showed that the applicant was found guilty and convicted on October 23, 2003 of violating Virginia Section 46.2-862, "Reckless Driving," a class one misdemeanor. The applicant was sentenced to 30 days in jail and fined \$750.00. In addition, public court records from the Alexandria, Virginia General District Court revealed that on April 13, 2009, the charge of "Possession of Burglary Tools" was reduced to "Disorderly Conduct" and the applicant was found guilty of violating Virginia Section 18.2-415, "Disorderly Conduct," a misdemeanor. The applicant was sentenced to 180 days in jail, a fine and 12 months probation.

The applicant also submitted uncertified computerized printouts from the District Court of Maryland which indicated that the charges of "Assault - 2nd Degree" and "Intent to Injure with a Deadly Weapon" were nolle prossed on July 26, 1999; the charge of "Assault - 2nd Degree" and "intent to Injure with a Deadly Weapon" were nolle prossed on October 20, 1999; the charge of "Assault - 2nd Degree" and "Disorderly Conduct" were nolle prossed on June 10, 2002" and a charge of "Urinate in Public Place" was nolle prossed on July 20, 2006. The applicant failed to submit the final court documents for the two counts of "Abuse and Neglect of Children" on September 1, 2003.

The director denied the TPS application because the applicant had been convicted of two or more misdemeanors committed in the United States.

On appeal, counsel claims that the applicant was only convicted of one misdemeanor. According to counsel, the "Reckless Driving conviction was a traffic offense and not a "crime." 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 Virginia's legal taxonomy classifies the applicant's offense as a "Traffic Offense" rather than a "crime," 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. The applicant was convicted and sentenced to 30 days in jail and fined \$750.00. Therefore, we conclude that the applicant's conviction for "Reckless Driving" qualifies as a "misdemeanor" as defined for immigration purposes in 8 C.F.R. § 244.1. Consequently, the director's decision to deny the application for TPS will be affirmed.

The applicant is, therefore, ineligible for TPS because of his misdemeanor convictions. 8 C.F.R. § 244.4(a). Accordingly, the director's decision to deny the TPS application is affirmed.

The director also determined that the applicant failed to submit an identity document bearing his photograph and/or fingerprint as required under the provisions of 8 C.F.R. 244.9(a)(1). The applicant has not provided such document on appeal. Therefore, the application must be denied on his basis 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 TPS 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.