



U.S. Citizenship
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FILE: [REDACTED]
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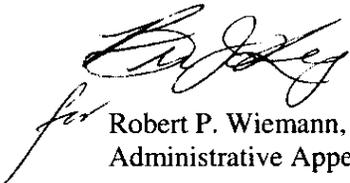
IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:
[REDACTED]

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.


for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and the case is now before the Administrative Appeals Office on appeal.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 was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on April 28, 2003. The director subsequently withdrew the applicant's TPS on August 16, 2004, when it was determined that the applicant had been convicted of two or more misdemeanors committed in the United States.

The director may withdraw the status of an alien granted TPS at any time if it is found 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 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 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 record reveals the following offenses:

- (1) On August 25, 1997, in the Criminal Court of the City of New York, County of Queens, Docket No. [REDACTED] (arrest date August 24, 1997), the applicant, under the name of [REDACTED] was convicted of operating a motor vehicle without a license, VTL 509.1. He was ordered to pay a fine in the amount of \$150 or spend 15 days in jail.
- (2) On March 17, 1998, in the Criminal Court of the City of New York, County of Queens, Docket No. [REDACTED] (arrest date March 16, 1998), the applicant, under the name of [REDACTED] was convicted of operating a motor vehicle without a license, VTL 509.1. He was ordered to pay a fine in the amount of \$150.
- (3) On April 25, 1999, in the Criminal Court of the City of New York, County of Queens, Docket No. [REDACTED] (arrest date April 24, 1999), the applicant, under the name of [REDACTED] was convicted of operating a motor vehicle without a license, VTL 509.1. He was placed on probation for a period of one year, and ordered to pay a fine in the amount of \$50 or spend 15 days in jail.

On appeal, counsel asserts that the applicant has never been convicted of any misdemeanor offense, as the record indicates that his three convictions of VTL § 509.1 are for violations that are punished by the Vehicle and Traffic Law. He contends that, therefore, the applicant is eligible for TPS because the three certificates of dispositions clearly prove that he was convicted of three violations, none of them reached the level of misdemeanors.

Counsel's assertion that the applicant's convictions are "violations" and not "misdemeanors" 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 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 violation of NY VTL 509.1 is punishable by up to 15 days of incarceration. Therefore, it is concluded that the applicant's conviction of Nos. 1, 2, and 3 above qualify as "misdemeanors" as defined for immigration purposes in 8 C.F.R. § 244.1.

The applicant is, therefore, ineligible for TPS due to his three misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw the applicant's TPS will be affirmed.

The Federal Bureau of Investigation fingerprint results report shows that the applicant was apprehended by the Border Patrol at McAllen, Texas, on January 5, 1996, and he was subsequently placed in removal proceedings.

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.