

PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

MI

FILE:

[REDACTED]
[WAC 05 104 85802]

Office: CALIFORNIA SERVICE CENTER

Date: MAY 31 2007

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:

RICHARD B. STAFFORD
100 FIRE ISLAND AVENUE
BABYLON, NY 11702

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of Honduras 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 a first Form I-821, Application for Temporary Protected Status, with the Texas Service Center (TSC) on June 3, 1999, during the initial registration period (SRC 99 186 53298 relates). On August 18, 2003, that application was denied because the director determined that the applicant was ineligible for TPS under section 244(c)(2)(B)(i) due to his having been convicted of a felony or two or more misdemeanors committed in the United States. The applicant did not file an appeal from that decision.

The applicant filed the current Form I-821 on January 12, 2005, and indicated that he was re-registering for TPS or renewing his temporary treatment benefits. The director of the CSC denied the application on October 26, 2005, because the applicant's prior TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS or renewal. The applicant, through counsel, filed his appeal of that decision on November 21, 2005.

If the applicant is filing an application for re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17. If the applicant is applying to renew his temporary treatment benefits, he must have a pending TPS application.

In this case, the applicant has not previously been granted TPS and he no longer has a pending application. Therefore, he is not eligible to re-register for TPS or to renew his temporary treatment benefits. Consequently, the director's decision to deny the application will be affirmed.

It is noted that the director's decision does not explore the possibility that the applicant was attempting to file an application for late initial registration for TPS instead of an application for annual re-registration.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant may apply for TPS during the initial registration period, or:

- (f) (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. 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 initial registration period for Hondurans was from January 5, 1999, through August 20, 1999. As previously discussed, the applicant filed the current application with Citizenship and Immigration Services (CIS) on January 12, 2005.

To qualify for late registration, the 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(f)(2) above.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value.

To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

A review of the record reflects that the applicant admits to having been convicted of the following offenses:

1. On July 14, 1994, in Cumberland County, North Carolina, of Driving While Intoxicated;
2. On August 8, 1995, in Nassau County, New York, of Harassment – 2nd Degree, in violation of New York State Penal Law (NYPL) section 240.26;
3. On March 7, 1996, in Nassau County, New York, of Aggravated Unlicensed Operation of a Motor Vehicle – 3rd degree, in violation of section 511.1;
4. On July 31, 1996, in Nassau County, New York, of Being in Park After Hours of Operation, in violation of Nassau County Parks Ordinance section 265.4a;
5. On June 25, 1998, in Nassau County, New York, of Disorderly Conduct, in violation of NYPL section 240.20.

On appeal, counsel for the applicant asserts that the applicant is eligible for TPS because he has only been convicted of one misdemeanor offense (No. 2, above), and that his other convictions (Nos. 1, 3, 4, and 5) are for “violations,” and do not qualify as misdemeanor offenses. Counsel’s assertions are 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 offenses detailed in Nos. 3 and 5, above, as “violations” rather than as “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. 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 violations of NYPL 240.26 and 240.20 are punishable by up to fifteen days incarceration. Therefore, we conclude that the applicant’s convictions detailed in Nos. 3 and 5 qualify as “misdemeanors” as defined for immigration purposes in 8 C.F.R. § 244.1.

The applicant has failed to provide any evidence to establish that this application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2). Furthermore, the applicant is ineligible for TPS due to his

having been convicted of at least two or more misdemeanors committed in the United States. 8 C.F.R. § 244.4(a). Therefore, the application must also be denied for these reasons.

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.