



U.S. Citizenship
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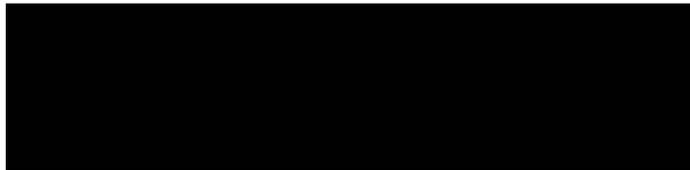
Office: VERMONT SERVICE CENTER

Date: **JUL 07 2008**

[EAC 0803251886, *appeal*]
[EAC 99 14350358]

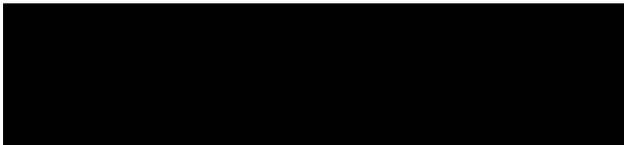
INRE:

Applicant:



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

ON BEHALF OF APPLICANT:



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DISCUSSION: The applicant's Temporary Protected Status (**TPS**) was withdrawn by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office on appeal.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 July 10, 2000. The director subsequently withdrew the applicant's status and denied the re-registration application on October 10, 2007, when it was determined that the applicant had been convicted of two misdemeanors in the United States.

On **appeal**, counsel acknowledges that the applicant has a misdemeanor conviction in California. Counsel argues that her conviction in New Jersey was not a misdemeanor, but rather a disorderly person's offense which is less than a misdemeanor under New Jersey law.

The VSC Director withdrew the applicant's TPS following 8 C.F.R. § 244.14(a)(3) which provides for withdrawal of **status** if the alien **fails** without good cause to register with Citizenship and Immigration Services within thirty days before the end of each twelve-month period after the benefit is initially granted. The director should have followed the regulations at 8 C.F.R. § 244.14(a)(1) which provide for the withdrawal of TPS **if** the alien was not in **fact** eligible at the time such status was **granted**, or at any time thereafter becomes ineligible.

Section 244(c) of the **Act**, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant 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.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.

The record reflects the following offenses:

- (1) On May 8, 1986, she was arrested by the Sheriff's Office in **Norwalk**, California, and charged with burglary. The applicant pled guilty to this misdemeanor on June 24, 1986. (Case # [REDACTED]).

- (2) On November 15, 1989, the applicant was convicted of shoplifting by a Judge of the Jersey City Municipal Court in Jersey City, New Jersey, in violation of New Jersey Statute § 2C:20-11B(1). (Docket # [REDACTED])

On appeal, counsel acknowledges that the applicant has a 1986 misdemeanor conviction in California for burglary. Counsel argues the applicant's conviction for shoplifting listed in item #2 above was not a misdemeanor, but rather a disorderly persons offense which is less than a misdemeanor under New Jersey law.

Counsel's assertions concerning the shoplifting conviction 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 Jersey's legal taxonomy classifies the applicant's offense as a "disorderly persons offense" rather than a "crime" and precludes the offense from giving rise to any criminal penalties in New Jersey, 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 or 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 Jersey law provides that a violation of NJS § 2C:20-11B(1) is punishable by up to six months incarceration. Therefore, we conclude that the applicant's conviction in Item # 2 above qualifies as a "misdemeanor" as defined for immigration purposes in 8 C.F.R § 244.1.

The applicant is ineligible for TPS due to her record of two misdemeanor convictions, detailed above. 8 C.F.R § 244.4(a). Consequently, the director's decision to withdraw the applicant's temporary protected status 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.