



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: MAR 03 2008
[EAC 01 202 50884]
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_CONSOLIDATED]

INRE: 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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, withdrew the applicant's Temporary Protected Status (TPS) and simultaneously disapproved his application for re-registration. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The applicant claims to be a 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 the application because he found that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel asserts that the director erred in finding that the applicant had been convicted of two or more misdemeanors, as he "only pled guilty to one disorderly persons offense and one municipal ordinance violation, none of which are considered misdemeanor criminal offenses."

Section 244(c) of the Act, and the related regulations in 8 C.F.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.F.R. § 244.4; and
- (t)
 - (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 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).

The regulation at 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.
8 C.F.R. § 244.1.

The record reveals the following offenses:

1. On July 26, 2001, *the* applicant was arrested and charged with shoplifting, in violation of New Jersey Statute 2C:20-11 b(1).
2. On December 6, 2002, the applicant was arrested and charged with loitering to engage in prostitution, in violation of New Jersey Statute 2C:34- I. I.

Pursuant to a letter dated September 14, 2005, the applicant was requested to submit the final court disposition for each of the charges detailed above. In response, the applicant submitted a certified abstract of conviction from the Municipal Court for the City of Linden, New Jersey. The abstract revealed that, on September 6, 2001, the applicant had been convicted of a violation of New Jersey Statute 2C:20-11b(1), and fined \$250. In an October 13, 2005, letter accompanying the applicant's response, counsel

requested a 30-day extension in which to submit documentation relating to the applicant's December 6, 2002, arrest. We note that the record reveals that in connection with a September 2, 2003, request for renewal of his employment authorization, the applicant had submitted a certified copy of the disposition of this offense. The document indicated that the applicant had been found guilty of a violation of "91-2," and fined \$380.

The record does not reflect that the applicant submitted additional documentation following his initial response to the director's September 14, 2005, request for evidence. The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and withdrew the applicant's TPS and denied his application for re-registration on March 24, 2006.

On appeal, counsel states that the applicant submitted documentation in response to the director's request, but feels it may have not been associated with the record as the applicant has two alien registration numbers. Counsel submits a copy of a certificate from the Municipal Court of the City of Elizabeth, New Jersey, indicating that the December 6, 2002, charge against the applicant of violating New Jersey Statute 2C:34-1.1 had been amended to a violation of city ordinance 91-2, prohibition against "certain types of loitering." The applicant was found guilty and paid a \$350 fine plus court costs of \$30.

Counsel argues that the applicant's conviction for shoplifting should not be considered either a crime or a misdemeanor because, according to the laws of New Jersey, the offense is a "disorderly person's offense" instead of a crime. Counsel further asserts that the applicant's conviction for loitering is akin to a traffic violation and should also not be considered a crime or a misdemeanor.

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 person's offense" rather than a "crime," and precludes the offense from giving rise to any criminal disabilities 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 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.

The record does not indicate the value of the merchandise the applicant was alleged to have shoplifted. We note that New Jersey Statute 2C:20-11 (c) provides that shoplifting of merchandise of more than \$200 is a crime, while shoplifting of merchandise of less than \$200 is a disorderly persons offense. A disorderly persons offense is punishable by imprisonment in the county jail for not more than six months. However, pursuant to 2C:20-11(c)(4), a first offense or second offense for shoplifting does not carry a term of imprisonment. Further, a violation of the City of Elizabeth Municipal Ordinance 91-2 carries no term of imprisonment. Accordingly, the record does not reflect that either of the offenses for which the applicant was convicted is a misdemeanor for immigration purposes.

Therefore, the director's decision will be withdrawn and the application will be approved.

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. Here, the applicant has met this burden.

ORDER: The appeal is sustained.