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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

[REDACTED]

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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER

Date: FEB 23 2011

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:

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 \$630. 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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 director withdrew TPS because the applicant had been convicted of a felony in the United States.

On appeal, counsel asserts the director's decision to withdraw TPS was erroneous as the New Jersey Statute of which the applicant was convicted [REDACTED] was not a felony. Counsel asserts, "because the state of New Jersey does not classify the offense of which [the applicant] was convicted as a 'felony' and because [the applicant] did not receive any jail time for her offense, she has not been convicted of a felony."

The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined 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. 8 C.F.R. § 244.14(a)(1).

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).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception 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 actually served. Under this exception, for purposes of 8 C.F.R. § 244 of the Act, the crime shall be treated as a misdemeanor. 8 C.F.R. § 244.1.

The court documentation, Case no. [REDACTED] reflects that on March 22, 2010, the applicant pled guilty in the Burlington County Superior Court of New Jersey to violating [REDACTED] possession of weapons for unlawful purposes, a crime of the third degree. The applicant was sentenced to two years of probation and ordered to take parenting and anger management classes.

Counsel, asserts, in pertinent part:

Under New Jersey law, subject to the provisions of NJ 2C:43-1, reference in any statute, rule, or regulation outside the code to the term of "high misdemeanor" shall mean crimes of the first, second, and third degree and reference to the term "misdemeanor" shall mean all crimes

The state of New Jersey no longer defines offenses as misdemeanors, high misdemeanors or felonies. The New Jersey Criminal Law now defines offenses as "crimes" and "disorderly person offenses." Crimes, which are also called "indictable offenses" are categorized into first, second, third and fourth degree. Under the New Jersey sentencing guidelines, a person convicted of a crime of the third degree may be imprisoned for three to five years. See N.J.S. 2C: 43-6a(3). Counsel has not provided any evidence to support her assertion that the offense of which the applicant was convicted is a "misdemeanor." The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); [REDACTED], 17 I&N Dec. 503, 506 (BIA 1980).

As noted above, for immigration purposes, a felony is any offense that "is punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any."

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 "felony" 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 "felony," 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 applicant, in this case, is applying for benefits under the federal law. Therefore, the definition of felony as stated in 8 C.F.R. § 244.1 applies in this case.

Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines the term "conviction:"

(A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where --

(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

(B) Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of

law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.

The applicant entered a plea of guilty to violating NJS section 2C:39-4d and the judge ordered some form of restraint on the applicant's liberty (probation for two years, and attend parenting and anger management). Therefore, the applicant has been "convicted" of a felony offense for immigration purposes.

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

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.