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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

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DATE: Office: NEBRASKA SERVICE CENTER

FILE:

MAY 11 2011

IN RE: 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:

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 Nebraska 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 Nebraska 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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant claims to be a native and citizen of Haiti 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 she found that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel asserts that the director's decision is erroneous as a timely response to the notice of intent to deny was not considered. Counsel asserts that the court dispositions provided reflect that the offenses were dismissed per administrative order, withheld adjudication and *nolle prosequere* respectively. Counsel asserts, in pertinent part:

Pursuant to [REDACTED] (unpublished decision), the Board of Immigration Appeals has indicated that under section 101(a)(48)(A)(i) of the Act provides, in pertinent part, that if adjudication of guilty has been withheld to constitute a conviction, the alien must have entered a guilty plea or *nolo contendere*.

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).

"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 Federal Bureau of Investigation report dated March 19, 2010, reflects the applicant's criminal history in the state of Florida as follows:

1. On August 18, 1994, the applicant was arrested by the Boynton Beach Police Department for aggravated battery, a felony.
2. On September 16, 2000, the applicant was arrested by the Lantana Police Department for failure to appear for a misdemeanor offense.
3. On May 30, 2002, the applicant was arrested by the Sheriff's Office of Palm County for failure to appear for improper drivers license expired more than four months and financial responsibility driving while license suspended.

On May 14, 2010, the applicant was requested to submit certified judgment and conviction documents for all arrests. The applicant, in response, submitted:

- For number one, certified court documentation, in [REDACTED] from the Palm Beach County/Circuit Court, which indicates that on September 14, 1994, the felony offense was amended to a misdemeanor. Certified court documentation from the Palm Beach County/Circuit, indicating that the misdemeanor charge of aggravated battery had been dismissed. [REDACTED]
- For number three, certified court documentation in [REDACTED] which indicates that the applicant was arrested on July 24, 2001, for financial responsibility /driving while drivers license suspended. On July 1, 2002, the applicant pled guilty to and was convicted of the offense. The applicant was ordered to pay a fine.
- A traffic citation dated September 16, 2000, for no driver's license, a violation of Florida Statute 322.03(1)(a), a misdemeanor, Certified court documentation in [REDACTED] [REDACTED] which indicates that on June 3, 2002, the applicant pled guilty to the misdemeanor offense, and adjudication of guilt was withheld. The applicant was ordered to pay a fine.
- Traffic citations dated May 30, 2002, for violating Florida Statute 320.02, no registration, and Florida Statute 322.34(2), driving while license is canceled, suspended or revoked. Certified court documentation, in [REDACTED] which indicates that on August 14, 2002, the applicant pled guilty to and was convicted of violating Florida Statute 322.34(2), a misdemeanor of the second degree. The applicant was ordered to pay a fine. The remaining charge was *nolle prosequi*.
- A letter from counsel indicating that the applicant's arrests in 1994 and 2000 were dismissed by the Palm Beach County Court, and that the 2002 offense was a motor vehicle violation. Counsel indicated that no additional court records could be obtained as they have been destroyed by the court.

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

(48)(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.

Contrary to counsel's assertion, the court documents clearly reflect that the applicant entered a guilty plea to the charges of: 1) financial responsibility/driving while driver's license suspended on July 1, 2002; 2) no driver's license on June 3, 2002; and 3) driving while license is canceled suspended or revoked on August 14, 2002. The judge accepted the pleas and ordered some form of punishment. Therefore, for immigration purposes, the applicant was convicted of the misdemeanor offenses within the meaning of section 101(a)(48)(A) of the Act, whether the offenses are defined a crime or a violation.

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 applicant, in this case, is applying for benefits under the federal law. Therefore, the applicant's convictions qualify as "misdemeanors" as defined for immigration purposes in 8 C.F.R. § 244.1.

The applicant has been convicted of two or more misdemeanors and, therefore, is ineligible for TPS Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). There is no waiver available, even for humanitarian reasons, of the requirements stated above.

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.