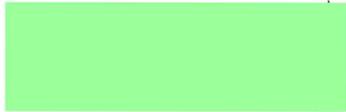




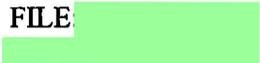
U.S. Citizenship  
and Immigration  
Services

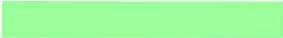
(b)(6)



DATE: **APR 18 2013**

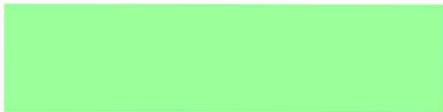
Office: VERMONT SERVICE CENTER

FILE 

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:

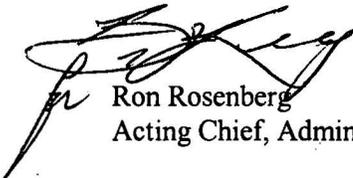


INSTRUCTIONS:

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 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Honduras who was granted 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 two misdemeanors in the United States.

On appeal, counsel, citing New Jersey case laws, asserts that the applicant's driving while intoxicated convictions are traffic violations and were erroneously classified as misdemeanors by the director. Counsel states that the applicant has only one misdemeanor conviction.

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).

"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 term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, 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. Section 101(a)(48)(A) of the Act.

The record contains the following:

1. Court documentation from the City of Union City, Hudson County Municipal Court of New Jersey, which indicates that on June 9, 2008, the applicant was found guilty of operating under the influence of liquor or drugs, a violation of N.J.S.A. 39:4-50. The applicant was ordered to pay a fine and court costs and participate in an alcohol treatment program for 12 months. Ticket no. [REDACTED].

2. Court documentation from the Hudson County Municipal Court of New Jersey, which indicates that on May 20, 2010, the applicant pled guilty to driving while intoxicated, a violation of N.J.S.A. 39:4-50. The applicant was ordered to pay a fine and was sentenced to serve 30 days in jail. Ticket no. [REDACTED]
3. Court documentation, which indicates that on February 16, 2011, the applicant was found guilty of violating N.J.S.A. 2C:30-11B(2), conceal merchandise from store without intent to pay. The applicant was ordered to pay a fine and court costs. Complaint no. [REDACTED]

On appeal, counsel submits a memorandum issued by U.S. Citizenship and Immigration Services on January 17, 2010, to support her argument that the applicant's driving while intoxicated (DWI) convictions in New Jersey should not disqualify him from maintaining TPS. Counsel's assertion is without merit as the memorandum specifically pertains to traffic infractions and violations committed in the state of New York.

According to counsel, the applicant's DWI convictions are traffic violations which are not criminal matters under New Jersey Statute. 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 legal taxonomy classifies DWI as a "violation" 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. In this case, New Jersey law provides that a violation of section 49:4-50 is punishable by up to 90 days for a second offense and up to 30 days for a first offense incarceration. See N.J.S.A. 39:4-50(1) and (2). Therefore, the AAO concludes that the applicant's DWI convictions above qualify as "misdemeanors" as defined for immigration purposes in 8 C.F.R. § 244.1.

In the instant case, the court documents submitted reflect that the applicant was found guilty on each charge and the judge ordered some form of punishment, penalty and/or restraint on the applicant's liberty for each charge above. Therefore, for immigration purposes, the applicant has been convicted of misdemeanor offenses within the meaning of section 101(a)(48)(A) of the Act.

The applicant is ineligible for TPS due to his three misdemeanor convictions. 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.