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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

DATE: APR 2 6 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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 El Salvador 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 asserts that the applicant's offenses should be considered traffic violations as they are part of the Maryland Transportation Code and not the Maryland Criminal Code.

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 in Case no. [redacted] from the District Court of Maryland for Montgomery County, which indicates that on September 9, 2003, the applicant pled guilty to driving, attempting to drive vehicle while impaired by alcohol, a violation of TA 21-902. The applicant was ordered to pay a $500 fine and was placed on probation for six months.

2. Court documentation in Case no. [redacted] from the District Court of Maryland for Montgomery County, which indicates that on April 22, 2005, the applicant pled guilty to driving, attempting to drive vehicle while impaired by alcohol, a violation of TA 21-902. The applicant was ordered to pay a $500 fine and was placed on probation for six months.

Counsel cites memoranda issued by USCIS on January 17, 2010, and January 21, 2011, to support his argument that the applicant's convictions in Maryland should not disqualify him from maintaining TPS. The memorandum dated January 17, 2010, specifically pertains to traffic infractions and violations committed in the state of New York. The state of Maryland has not classified the above offenses to be violations. The memorandum dated January 21, 2011, specifically pertains to certain offenses where the court has issued a "no jail" or "no incarceration" certification. The court documents submitted do not indicate that a "no jail" or "no incarceration certification" was issued, and the applicant has not provided any evidence to dispute the court's documents.

Counsel asserts that pursuant to Maryland Transportation Code § 27-101(c)(23), the maximum penalty for the applicant's convictions of driving while impaired by alcohol is a fine of $500 and imprisonment for not more than two months or both. Counsel states that U.S. Citizenship and Immigration Services "should conclude that this violation is not a misdemeanor for TPS purposes because it does not even carry a possible penalty of one year or six months imprisonment as misdemeanors usually do."

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 counsel considers the applicant's traffic convictions to be "violations" rather than "crimes," 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.* As previously cited by counsel, Maryland law provides that the maximum penalty for driving, attempting to drive vehicle while impaired by alcohol is a fine of $500 and imprisonment for not more than two months or both.

Therefore, the AAO concludes that the applicant's convictions above qualify as "misdemeanors" as defined for immigration purposes in 8 C.F.R. § 244.1.

The court documents submitted reflect that the applicant pled guilty to each charge and the judge ordered some form of penalty and/or restraint on the applicant's liberty for each charge. Accordingly, 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 two 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.