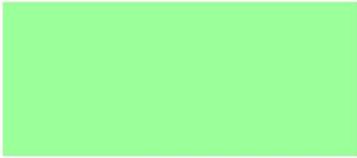




U.S. Citizenship
and Immigration
Services

(b)(6)



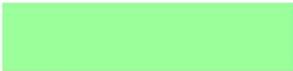
DATE: **AUG 09 2013**

Office: VERMONT SERVICE CENTER

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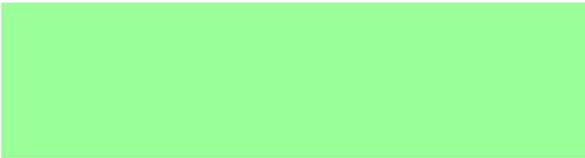


IN RE: Applicant:



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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 and because he had failed to submit requested court documentation relating to his arrest on December 25, 2008.

On appeal, counsel asserts that the applicant has not been convicted of misdemeanors as driving under the influence and operating without a license are classified as traffic offenses. Counsel states that the final disposition of the applicant's December 25, 2008 arrest was provided on March 4, 2011.

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.

Section 101(a)(48)(B) of the Act provides, "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 AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

In response to a notice dated February 12, 2008, which requested the applicant to submit certified judgment and conviction documents from the courts for all arrests, the applicant provided court documentation in Case no. 07022710TC10A from the County Court in and for Broward County, Florida, which indicates that on July 16, 2007, the applicant pled guilty to operating without a license, a violation of Florida Statute 322.03(1). Adjudication of guilt was withheld and the applicant was ordered to pay court cost.

The current Federal Bureau of Investigation report reflects the applicant's criminal history in the state of Florida as follows:

1. On December 25, 2008, the applicant was arrested by the [REDACTED] Police Department of Florida for driving under the influence with blood alcohol level above 0.20 percent, a violation of Florida Statute 316.193, and operating without a valid license a violation of Florida Statute 322.03(1).
2. On February 21, 2010, the applicant was arrested by the [REDACTED] County Sheriff's Office of Florida for operating without a valid license, a violation of Florida Statute 322.03(1).
3. On August 9, 2010, the applicant was arrested by the [REDACTED] Police Department of Florida for driving under the influence – 2nd offense, and driving with .15 percent or more alcohol in the blood with a person under the age of 18, a violation of Florida Statute 316.193, two counts of driving under the influence causing damage to person or property, Florida Statute, operating without a valid license, a violation of Florida Statute 322.03(1), driving while license is suspended and careless driving.

On November 26, 2010, the applicant filed a re-registration application [REDACTED]. The applicant indicated that he had several arrests including in October 2003 by the [REDACTED] County Police of Virginia for driving under the influence and driving without a license. The applicant indicated that he was in the process of obtaining the court records from Virginia. Along with the re-registration application, the applicant submitted the following:

- For number one, the arrest report from the [REDACTED] Police Department of Florida and court documentation in Case no. [REDACTED] from the County Court in and for [REDACTED] County, Florida, which indicates that on March 1, 2010, the applicant pled no contest to driving under the influence with blood alcohol level above 0.20 percent and operating without a valid license. The applicant was found guilty of violating Florida Statute 316.193 and the applicant was ordered to attend DUI school level 1, pay a \$1000 fine and court costs, and was placed on probation for six months. Adjudication of guilt was withheld for violating Florida Statute 322.03(1) and the fine and court costs were waived.

- For number two, the arrest report and court documentation in Case no. [REDACTED] from the County Court in and for [REDACTED] County, Florida, which indicates that on March 9, 2010, the applicant pled no contest to operating without a valid license. Adjudication of guilt was withheld and the applicant was ordered to pay court costs.
- For number three, the arrest report from the [REDACTED] Police Department and court documentation in Case no. [REDACTED] from the County Court in and for [REDACTED] County, Florida, which indicates that on November 12, 2010, the applicant was found guilty of count one, driving under the influence with blood alcohol level above 0.20 percent with a minor in vehicle and count five, operating without valid license. The applicant was placed on probation for 12 months (to run consecutive), ordered to attend a DUI school level 2, and pay a \$2000 fine and court costs. The applicant was credited with time served (96 days) for count one.

On January 27, 2011, the director issued a notice requesting the applicant to submit certified judgment and convictions documents from the courts for all arrests including the arrests mentioned above. The applicant, in response, re-submitted the final court dispositions. Therefore, the director's finding that the applicant failed to submit the court disposition for his 2008 arrest is withdrawn.

On appeal, counsel claims that the applicant was only convicted of traffic offenses and not criminal offenses. However, 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 Florida's legal taxonomy classifies the applicant's offense as a "traffic offense" rather than a "crime," 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.* (Emphasis added.) Florida law provides that:

- A violation of driving under the influence with blood alcohol level above 0.20 with a minor in vehicle is punishable by up to 9 months incarceration. Florida Statute 316.193(4)(b).
- A violation of driving under the influence is punishable by up to 6 months incarceration. Florida Statute 316.193(2a).
- Anyone who violates operating without a valid license (except paragraph (c)) is guilty of a misdemeanor of the first degree, punishable as provided in section 775.082 or section 775.083. Florida Statute 322.03(3)(b).

Therefore, the applicant's convictions listed 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 pled no contest and/or was found guilty of each charge, and the judge ordered some form of punishment, penalty and/or restraint on the applicant's liberty to each charge. 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 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 on this ground will be affirmed. The director requested the applicant to submit certified judgment and conviction documents for all arrests. The applicant, however, has failed to provide court documentation revealing the final disposition of his arrest in October 2003 in ██████████ County, Virginia. Therefore, the applicant is also ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, TPS must also be withdrawn on this ground.

TPS will be withdrawn for the above stated reasons, with each considered as an independent and alternative basis for the withdrawal. 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.