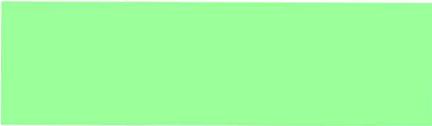




U.S. Citizenship
and Immigration
Services

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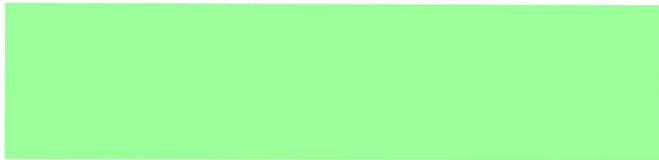
DATE: **SEP 19 2013** Office: VERMONT SERVICE CENTER

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 (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
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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 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 or more misdemeanors in the United States.

On appeal, counsel asserts that except for the driving under the influence offense, the remaining offenses are traffic violations and should not be considered disqualifying misdemeanors for TPS.

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

1. On [REDACTED] 2001, the applicant was arrested by the [REDACTED] Police Department for failure to stop/remain at crash involving injury and operating without valid license.
2. On [REDACTED] 2004, the applicant was arrested by the [REDACTED] Police Department for operating without valid license and driving under the influence of alcohol or drugs.
3. On [REDACTED] 2004, the applicant was arrested by the [REDACTED] Police Department for operating without valid license and failing to register vehicle.
4. On [REDACTED] 2005, the applicant was arrested by the [REDACTED] Police Department for operating without valid driver's license.
5. On [REDACTED] 2010, the applicant was arrested by the [REDACTED] Sheriff's Office for probation violation.

On October 21, 2011, the applicant was requested to provide certified judgment and conviction documents from the court(s) for all arrests. The applicant, in response, submitted:

- For number two, court documentation in Case no. [REDACTED], which indicates that on [REDACTED], 2005, the applicant pled no contest to violating Florida Statute 316.193(1), driving under the influence, and Florida Statute 322.03(1), operating without valid license. For violating Florida Statute 316.193(1), the applicant was placed on probation for 12 months, ordered to perform 50 hours of community service, pay a fine and court costs and attend DUI School Level 1. The fine was waived for the remaining offense.
- For number three, court documentation in Case no. [REDACTED] which indicates that on [REDACTED] 2005, the applicant pled no contest to violating Florida Statute 322.03(1), operating without valid license. The applicant was ordered to pay court cost and the fine was waived.
- For number four, court documentation in Case no. [REDACTED] which indicates that the applicant pled no contest to violating Florida Statute 322.03(1), operating without valid license. The applicant was ordered to pay a fine and court cost.
- For number five, court documentation in Case no. [REDACTED], which indicates that on [REDACTED] 2010, the applicant admitted to the allegation of violating his probation stemming from his driving under the influence conviction. Probation was revoked with time served.
- Court documentation in Case no. [REDACTED] which indicates that on [REDACTED] 2002, the application violated Florida Statute 322.03(1), operating without valid license. On [REDACTED] 2003, the applicant was convicted of this offense, and was ordered to pay a fine/court cost.
- Court documentation in Case no. [REDACTED] which indicates that on [REDACTED] 2010, the applicant pled no contest to violating Florida Statute 322.34(a), driving while license is suspended and Florida Statute 322.03(1) operating without valid license. The fines were waived for the offenses.

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.

Counsel asserts that except for the driving under the influence offense, the applicant was only convicted of traffic offenses and not criminal offenses.

Citing *Jaramillo v. City of Homestead*, 322 So. 2d 496 (Fla. 1975), counsel asserts that the Florida Supreme Court rejected the notion that county ordinance violations are misdemeanors. Counsel, however, has not provided any credible evidence from the court indicating that any of the above offenses were classified as a county ordinance violation.

Counsel cites to Florida Statute 318.14 which establishes noncriminal traffic infractions, exceptions and procedures and to memorandums issued by U.S. Citizenship and Immigration Services (USCIS) on January 17, 2010, and January 21, 2011, to support the argument that the applicant's remaining convictions in Florida 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 memorandum dated January 21, 2011, specifically pertains to certain offenses where the court has issued a "no jail" or "no incarceration" certification. The state of Florida has not classified any of the above violations to be infractions and the court documents submitted do not indicate that a "no jail" or "no incarceration certification" was issued pursuant to Rule 3.994 of the Florida Rules of Criminal Procedure.

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.

The fact that Florida's legal taxonomy classifies Florida Statute 322.03(1) 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. 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. Florida law provides the maximum penalty for a conviction of a misdemeanor of the second degree is imprisonment for a period of not more than 60 days in jail or by a fine of not more than \$500, or both such fine and imprisonment. See Florida Statutes sections 775.082(4) and 775.083(1). Therefore, the above violation of Florida Statute 322.03(1), qualify as a "misdemeanor" as defined for immigration purposes in 8 C.F.R. § 244.1.

Because the judge did not impose some form of punishment, penalty, or restraint on the applicant's liberty for violating Florida Statute 322.03(1) in Case nos. [REDACTED] and [REDACTED] these offenses cannot be considered a conviction within the meaning of section 101(a)(48)(A) of the Act.

The court documents in Case nos. [REDACTED], [REDACTED], and [REDACTED] reflect that the applicant entered a no contest plea to violating Florida Statute 322.03(1) and the judge accepted the pleas and ordered some form of penalty (a fine or court cost). Therefore, for immigration purposes, the applicant has been convicted of the misdemeanor offenses within the meaning of section 101(a)(48)(A) of the Act. The AAO has reviewed counsel's brief on appeal and the authority cited therein, and concludes that the misdemeanor convictions continue to affect immigration consequences.

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). There is no waiver available, even for humanitarian reasons, of the requirements stated above. 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.