



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: Office: VERMONT SERVICE CENTER

FILE:

APR 24 2014

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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

On appeal, citing *State v. Hamm*, 121 N.J. 109 (1991), counsel asserts that an offense of operating under the influence of liquor or drugs is not a misdemeanor as defined by New Jersey Statute.

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 record contains the following:

1. Court documentation from the Union City Municipal Court, which indicates that on October 8, 2002, the applicant pled guilty to and was adjudged guilty of violating N.J.S.A. 2C:33-2A(1), improper behavior/disorderly conduct. The applicant was ordered to pay a fine and court costs. Complaint [REDACTED]
2. Court documentation from the New Jersey Automated Traffic System, which indicates on August 7, 2007, the applicant pled guilty to and was adjudged 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 cost. Ticket [REDACTED]

On appeal, counsel asserts that the applicant's conviction of operating under the influence of liquor or drugs is a traffic offense which is not a criminal matter 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 operating under the influence of liquor or drugs as a "traffic offense" 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. The regulation clearly states that a misdemeanor is a crime "punishable by imprisonment for . . . one year or less, regardless of the term . . . actually served." [Emphasis added.] Likewise, the regulation clearly states that a criminal violation will not be considered a misdemeanor only if it is "punishable by imprisonment for a maximum term of five days or less." [Emphasis added.] The operative word is "punishable," which indicates that a misdemeanor is defined under the regulation by the maximum imprisonment possible for the crime under New Jersey law, not the specific prison term meted out by the judge in a particular case. In this case, New Jersey law provides that a violation of operating under the influence of liquor or drugs is punishable by up to 30 days for a first offense. See N.J.S.A. 39:4-50(a)(1)(i). Therefore, the AAO concludes that the applicant's conviction qualifies as a "misdemeanor" 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 guilty to operating under the influence of liquor or drugs and the judge ordered some form of punishment

or penalty to the charge above. Therefore, for immigration purposes, the applicant has been convicted of a misdemeanor offense 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.

While not the basis for the dismissal of the appeal, it is noted that the applicant was arrested on or about August 3, 2012, by the [REDACTED] Police Department (New Jersey) for endangering the welfare of children. This matter should be addressed in any future proceedings

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.