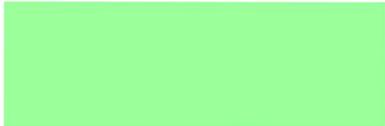


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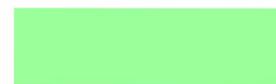
U.S. Citizenship
and Immigration
Services



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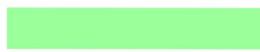
DEC 08 2014

Office: VERMONT SERVICE CENTER



IN RE:

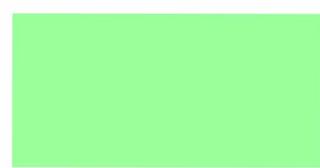
Applicant:



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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 Honduras who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254. On September 3, 2014, the director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel submits a brief arguing that the applicant's disorderly persons offenses are neither misdemeanors nor felonies.

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).

"Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term actually served, if any. There is an exception when the offense is defined by the state as a misdemeanor and the sentence actually imposed is one year or less, regardless of the term actually served. Under this exception, for purposes of 8 C.F.R. § 244 of the Act, the crime shall be treated as a misdemeanor. 8 C.F.R. § 244.1.

"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."

On appeal, counsel citing 8 C.F.R. § 244.14(b)(1) argues that the director violated the applicant's due process when he did not provide *personal service* of the withdrawal of TPS to the applicant.

Counsel is correct that the regulation states that the withdrawal of an applicant's status shall be served by personal service. While counsel asserts that the applicant was denied his due process by not being personally served, she does not specify how the alleged deprivation interfered with the applicant's ability to prepare his appeal. In the instance case, the failure to personally serve the applicant was harmless error and did not prejudice the applicant. Both the applicant and his former counsel received the withdrawal notice, and the lack of personal service did not prevent the applicant from submitting a timely and responsive rebuttal to the director's notice of decision.

The record contains the following:

1. Court documentation from the Superior Court of New Jersey, [REDACTED] Division, [REDACTED] which indicates that on March [REDACTED] the applicant was found guilty of violating N.J.S. 2C:29-9(b), contempt. The applicant was placed on probation for 12 months and ordered to pay court costs. Case no. [REDACTED]
2. Court documentation from the [REDACTED] Courthouse, [REDACTED] New Jersey, which indicates that on June [REDACTED] the applicant was found guilty of violating N.J.S. 2C:12-1a(3), simple assault. The applicant was placed on probation for 12 months and ordered to pay a fine and court costs. Case no. [REDACTED]

The state of New Jersey no longer defines offenses as misdemeanors, high misdemeanors or felonies. The New Jersey Criminal Law now defines offenses as "crimes" and "disorderly persons offenses." Crimes, which are also called "indictable offenses" are categorized into first, second, third and fourth degree.

N.J.S. 2C:29-9 defines contempt as:

- a. A person is guilty of a crime of the fourth degree if he purposely or knowingly disobeys a judicial order or protective order or hinders, obstructs or impedes the effectuation of a judicial order or the exercise of jurisdiction over any person, thing or controversy by a court, administrative body or investigative entity.
- b. Except as provided below, a person is guilty of a crime of the fourth degree if that person purposely or knowingly violates any provision in an order entered under the provisions of the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et al.) or an order entered under the provisions of a substantially similar statute under the laws of another state or the United States when the conduct which constitutes the violation could also constitute a crime or a disorderly persons offense. In all other cases a person is guilty of a disorderly

persons offense if that person knowingly violates an order entered under the provisions of this act or an order entered under the provisions of a substantially similar statute under the laws of another state or the United States. Orders entered pursuant to paragraphs (3), (4), (5), (8) and (9) of subsection b. of section 13 of P.L.1991, c.261 (C.2C:25-29) or substantially similar orders entered under the laws of another state or the United States shall be excluded from the provisions of this subsection.

Under the New Jersey sentencing guidelines, a person convicted of a crime of the fourth degree may be imprisoned up to 18 months. N.J.S. 2C: 43-6a(4). New Jersey law provides that a conviction of a disorderly person offense may be punishable by up to 180 days incarceration. N.J.S. 2C: 43-8a.

Counsel, on appeal, argues that the applicant's convictions should not be considered either a felony or a misdemeanor because, according to the laws of New Jersey, each offense is a "disorderly person's offense" instead of a crime. Citing to the U.S. Citizenship and Immigration Services (USCIS) memorandum dated January 17, 2010, counsel asserts that the applicant's convictions are akin to New York traffic violations and infractions and therefore they should not disqualify him from maintaining TPS. Counsel also cites to a memorandum issued by USCIS on January 21, 2011, to support his argument that the applicant's convictions in New Jersey should not disqualify him from maintaining TPS.

USCIS memorandum issued by Associate Director, Service Center Operations, and the Chief, AAO on January 17, 2010, determined that offenses described as violations and traffic infractions in New York should not be considered disqualifying misdemeanors. Counsel's assertion has no merit as the state of New Jersey has not classified the above offenses to be a violation or an infraction. The memorandum of 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" had been issued and no certification was presented on appeal.

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's legal taxonomy classifies the applicant's offenses as "disorderly persons offenses" 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. The applicant was convicted of offenses for which New Jersey law provides that the maximum penalty for a conviction is 180 days. The applicant, in this case, is applying for benefits under the federal law. Therefore, the above offenses qualify 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 was found guilty on each charge and the judge ordered some form of penalty and 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.

Because a term of imprisonment of one year was not imposed, the applicant’s contempt conviction shall be deemed a misdemeanor. We have reviewed counsel’s brief on appeal and the authorities cited therein, and conclude that the applicant remains 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 will be affirmed.

ORDER: The appeal is dismissed.