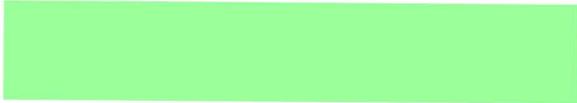


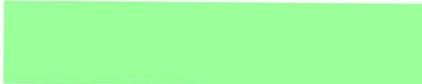


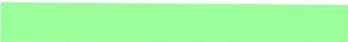
U.S. Citizenship
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Services

(b)(6)



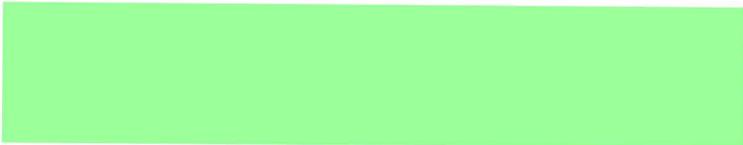
DATE: **FEB 20 2014** Office: VERMONT SERVICE CENTER



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:

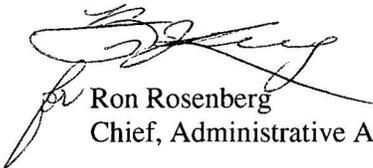


INSTRUCTIONS:

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,



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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center.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

The director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel asserts that the applicant "was never incarcerated as a result of the citations, or during the pendency of her cases, or never sentenced to serve any time in jail after being sentenced." Counsel states that an "adjudication withheld" is not a conviction under Florida Statute § 948.01(2).

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 County Court Disposition Orders in and for [REDACTED] Florida:

1. Court documentation in Case no. [REDACTED] which indicates that on April 24, 2011, the applicant pled guilty to operating without valid license. Adjudication of guilt was withheld and the applicant was ordered to pay a fine and court cost.
2. Court documentation in Case no. [REDACTED] which indicates that on December 3, 2008, the applicant pled guilty to operating without valid license. Adjudication of guilt was withheld and the applicant was ordered to pay a fine and court cost.
3. Court documentation in Case no. [REDACTED], which indicates that on May 8, 2006, the applicant pled no contest to no valid driver's license. Adjudication of guilt was withheld and the applicant was ordered to pay court cost.
4. Court documentation in Case no. [REDACTED], which indicates that on April 30, 2004, the applicant pled no contest to operating without valid license. Adjudication of guilt was withheld and the applicant was ordered to pay court cost.

On appeal, counsel cites to a memorandum issued by U.S. Citizenship and Immigration Services (USCIS) on January 21, 2011, to support the argument that the applicant's convictions in Florida should not disqualify her from maintaining TPS. 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, however, 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 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 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 Florida law, not the specific prison term meted out by the judge in a particular case.

Operating without valid license/no driver’s license is a violation of Florida Statute §322.03(1). Florida Statute § 322.39 (b)(2) provides unless another penalty is provided in this chapter or by the laws of this state, a person convicted of a misdemeanor for the violation of a provision of this chapter is guilty of a misdemeanor of the second degree, punishable as provided in §§ 775.082 or 775.083. 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 §§ 775.082(4) and 775.083(1). 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.

The court documents submitted reflect that the applicant pled no contest or guilty to each charge, and the judge ordered some form of penalty to each charge. 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.

Counsel citing *Padilla v. Kentucky*, 130 S. Ct. 1473 (U.S. 2010)¹ asserts that on two separate occasions, at the time of the applicant’s plea, her defense counsel failed to advise her of the immigration consequences of a nolo contendere plea. Counsel, however, does not submit any evidence to support his assertion. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Without credible evidence from the court indicating that a conviction has been vacated for underlying procedural defects having to do with the merits of the case, the conviction continues to effect immigration consequences.

The applicant is ineligible for TPS due to her 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.

¹ Counsel must inform a client whether his plea carries a risk of deportation.