



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **SEP 22 2014**

Office: VERMONT SERVICE CENTER

FILE: [Redacted]

IN RE: Applicant: [Redacted]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:
[Redacted]

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn and an application for re-registration was simultaneously denied by the Director, Vermont Service Center. The applicant has appealed the denial of his re-registration application¹. The matter is now before the Administrative Appeals Office (AAO). 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. On February 28, 2014, the director denied the re-registration application because the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, counsel for the applicant provides the requested court dispositions. Counsel asserts that the state of South Carolina classifies driving under suspension as a traffic infraction and not a misdemeanor. Counsel further asserts that the applicant was convicted of disturbing the peace, a municipal code ordinance, which is not classified as a misdemeanor offense.

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 Federal Bureau of Investigation report reflects the applicant's criminal record in the state of South Carolina as follows:

¹ The applicant listed the receipt number of the current Form I-821 on the appeal form.

1. On July [REDACTED] the applicant was arrested by the [REDACTED] Police Department for no driver's license.
2. On November [REDACTED] the applicant was arrested by the [REDACTED] Police Department for driving without a license, improper vehicle license, unlawful operating of unsafe equipped vehicle.
3. On August [REDACTED] the applicant was arrested by the Sheriff's Office of [REDACTED] for speeding and driving under suspension.
4. On May [REDACTED] the applicant was arrested by the [REDACTED] Police Department for public disorderly conduct.

On appeal and in response to the notice of December 16, 2013, which requested the applicant to provide certified judgment and conviction documents from the court for all arrests, the applicant submitted:

- For number one, a certified booking report [REDACTED] from the [REDACTED] Police Department, South Carolina, which indicates that the applicant was fined \$200 and sentenced to serve 30 days in jail on July [REDACTED] for violating South Carolina Code § 56-1-20, no driver's license.

A person who drives a motor vehicle on a public highway of this State without a driver's license in violation of § 56-1-20 is guilty of a misdemeanor and, upon conviction of a first offense, must be fined not less than fifty dollars nor more than one hundred dollars or imprisoned for thirty days. South Carolina Code § 56-1-440.

- For number two, certified court documentation from the Municipal Court of [REDACTED] South Carolina indicating that each case was dismissed. Case nos. [REDACTED]
- For number three, certified court documentation from Central Traffic Court of [REDACTED] South Carolina in Case no. [REDACTED] which indicates that on August [REDACTED] the applicant was ordered to pay a fine and court cost for violating South Carolina Code § 56-1-460, driving under suspension.

Upon a first offense of violating § 56-1-460, the punishment is a fine of \$300 or imprisonment for up to thirty days, or both. South Carolina Code § 56-1-460(a).

- For number four, certified court documentation in Case no. [REDACTED] from the Clerk of Court, [REDACTED] South Carolina, which indicates that on June 25, 2012, the applicant pled guilty to violating South Carolina Code of Ordinance § 13-36, disorderly conduct – disturbing the peace. The applicant was ordered to pay a fine and court costs.

[REDACTED] South Carolina Code of Ordinance, Chapter 1 § 1-10(a) provides:

Whenever in this Code or in any ordinance or resolution of the city council or in any rule, regulation or order promulgated by any officer or agency of the city under authority duly vested in him or if any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or the doing of any act is required, or the failure to do any act is declared to be unlawful or an offense or a misdemeanor, *where no specific penalty is provided* therefor, the violation of any such provision of this Code or any such ordinance, resolution, rule, regulation or order shall be punished by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment for a term not exceeding thirty (30) days, *or both*. Each day any violation of any provision of this Code or of any such ordinance, resolution, rule, regulation or order shall constitute a separate offense.

[Emphasis added.]

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 the applicant was not sentenced to five or more days in county jail for number four above 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 South Carolina law, not the specific prison term meted out by the judge in a particular case. In this case, the applicant was convicted of offenses in numbers three and four above punishable by up to 30 days incarceration, which meets the definition of a misdemeanor for immigration purposes. Consequently, the applicant remains convicted of the misdemeanor offenses.

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 deny the re-registration application for this reason 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.