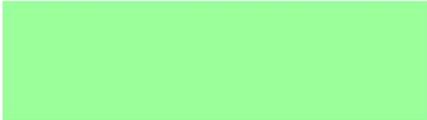




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: MAR 13 2015

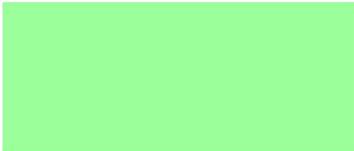
Office: VERMONT SERVICE CENTER

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,

for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. A motion to reopen and a motion to reconsider, filed by the applicant, was granted by the director. The director subsequently affirmed his previous decision. The applicant has appealed the director's decision and the matter is now before the Administrative Appeals Office (AAO) on review. 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 May 5, 2011, the director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States. On motion, counsel asserted that as Alabama law considers public intoxication a violation, it should be treated as such and not elevated to the level of a misdemeanor. In affirming his decision, on May 25, 2012, the director indicated that the enactment of section 101(a)(48)(a) of the Act was to create an uniform definition of conviction that was no longer dependent on the vagaries of state law. The director determined that as there was a maximum punishment of 30 days in jail for a violation of public intoxication, the applicant's conviction met the definition of a misdemeanor.

On appeal, counsel asserts, in pertinent part, "a federal definition which changes the states' classification of violation to misdemeanor violates Article 1 of the Constitution."

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 court documentation from the [REDACTED] Superior Court for California, which indicates that on [REDACTED] 2003, the applicant pled nolo contendere to violating section 23152(b) of the California Vehicular Code, driving under the influence with .08% or more alcohol in the blood, a misdemeanor. Imposition of sentence was suspended and the applicant was placed on probation for three years and ordered to serve two days in jail, pay a fine and court costs and complete a first offender program.

The record also contains court documentation from the [REDACTED] District Court for Alabama, which indicates that on [REDACTED] 2009, the applicant pled guilty to violating Ala. Code § 13A-11-10, public intoxication. The applicant was ordered to pay a fine and court costs and complete a drug and/or alcohol treatment program.

Public intoxication is defined under Alabama law as a violation. Ala. Code § 13A-11-10(b). A “violation” is defined as an offense for which a sentence to a term of imprisonment not in excess of 30 days may be imposed. Ala. Code § 13A-1-2(16). A “crime” is defined as a misdemeanor or a felony. Ala. Code § 13A-1-2(4). A “misdemeanor” is defined as an offense for which a sentence to a term of imprisonment not in excess of one year may be imposed. Ala. Code § 13A-1-2(9).

Counsel asserts that as the Code of Alabama provides that a violation is punishable by a maximum of 30 days, it cannot be construed as a misdemeanor pursuant to 8 C.F.R. § 244.1.

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 Alabama’s legal taxonomy classifies the applicant’s offense as a “violation” rather than a “crime,” and precludes the offense from giving rise to any criminal disabilities in Alabama, is simply not relevant to the question of whether the offense qualifies as a “misdemeanor” for immigration purposes. The applicant, in this case, is applying for benefits under the federal law. 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 Alabama law. In this case, the applicant was convicted of an offense punishable by up to 30 days incarceration, which meets the definition of a misdemeanor for immigration purposes. We have reviewed counsel’s brief on appeal and the authorities cited therein, and conclude that the misdemeanor conviction continues to affect immigration consequences.

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.

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.