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U.S. Citizenship
and Immigration
Services

MM

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date:

FEB 21 2006

[SRC 02 213 55213]

[SRC 03 158 52799, *Motion*]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

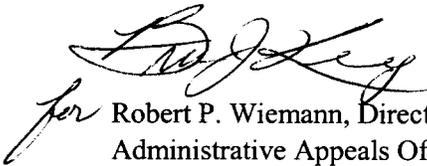
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The previous decision of the AAO will be affirmed and the motion to reopen will be dismissed.

The applicant is a native and citizen of Honduras who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application, because the applicant failed to establish he was eligible for TPS due to his record of a felony conviction for cocaine possession.

A subsequent appeal from the director's decision was dismissed on April 29, 2003, after the Director of the AAO also concluded that the applicant had failed to establish that he was eligible for TPS.

On motion to reopen, the applicant reasserts his claim of eligibility for TPS and submits evidence in an attempt to establish his good character and his assertion that the conviction resulted from his being the "victim of a mistake."

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

A motion to reconsider must state the reason for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy ... [and] must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The applicant's motion to reopen consists of his own statement that he had not bought or used any cocaine, but that someone standing near him threw a bag of it in his direction as police approached, and subsequently charged the applicant with possession of the bag. The applicant states that he did not understand clearly what the judge told him when he went for trial, and because he feared being jailed he told the judge he was guilty. The applicant asks that his case be reconsidered because he was young and inexperienced when he arrived in the United States and because he has a family to support and needs the employment authorization. He believes he has enough evidence to show that he was not guilty of the felony for which he was charged. In support of the appeal, the applicant submits affidavits from two acquaintances attesting to his good moral character. The applicant also resubmits: the Complaint/Arrest Affidavit dated August 21, 1999; a jail booking record dated in August 1999, for Case [REDACTED] and a record search from the Miami-Dade Police Department dated September 10, 2002, reflecting a local felony arrest record, Case [REDACTED] record with the Felony Division, Miami, Florida.

The applicant asserts that he was a "victim of a mistake," stating that he was mistakenly identified as having possession of cocaine, and subsequently, due to language barriers, did not fully understand his plea to the judge in his case. The court record, however, clearly shows that the applicant was convicted of a "Non-Life Felony."

Citizenship and Immigration Services (CIS) is required to rely on the court record as it stands, and cannot make determinations of guilt or innocence based on that record. Furthermore, CIS may only look to the judicial records to determine whether the person has been convicted of the crime, and may not look behind the conviction to reach an independent determination concerning guilt or innocence. *Pablo v. INS*, 72 F.3d 110, 113 (9th Cir. 1995); *Gouveia v. INS*, 980 F.2d 814, 817 (1st Cir. 1992); and *Matter of Roberts*, 20 I&N Dec. 294 (BIA 1991).

The motion does not reflect that the applicant was not convicted of a crime. As such, the issue on which the underlying decisions were based has not been overcome on motion. The applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The motion to reopen is dismissed. The previous decision of the AAO dated April 29, 2003, is affirmed.